

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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| In the Matter of |) | |
| |) | |
| Section 63.71 Application of |) | Docket No. 07-156 |
| Pac-West Telecomm, Inc. |) | Comp. Pol. File No. 812 |
| |) | |
| For Authority to Discontinue Certain Services |) | |

**REPLY OF PAC-WEST TELECOMM, INC.
IN SUPPORT OF APPLICATION TO DISCONTINUE CERTAIN SERVICES**

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SUMMARY

Pac-West should be permitted to disconnect service to Dollar Phone throughout the twenty-four states and the District of Columbia that make up its eastern region (“Eastern Region”) because it is expressly permitted to do so pursuant to its contract with Dollar Phone and because the discontinuance will not result in any end-user customer hardship. Dollar Phone’s Opposition to Pac-West’s discontinuance of service to the Eastern Region asserts that Dollar Phone’s customers face a “devastating and catastrophic loss of telephone service.”¹ This claim is remarkable for its audacity in omission and misstatement of key facts, and its mischaracterization of Commission and Bankruptcy Court decisions:

- Dollar Phone fails to mention that its prepaid cards have toll-free access numbers that are available to Dollar Phone’s customers in the event that local access numbers do not function;
- There will be no loss of service as Dollar Phone claims. The worst case for Dollar Phone’s customers is they must use a toll-free access number temporarily until the local access numbers are transitioned from Pac-West;
- Dollar Phone fails to mention that Pac-West and Dollar Phone have a binding contract that specifically authorizes Pac-West to exit any region on 30-days’ notice, and Dollar Phone cites to no law for the proposition that the Commission’s discontinuance requirements abrogate the terms of Pac-West’s existing contract with Dollar Phone;
- Dollar Phone claims it cannot issue refunds for prepaid cards that do not work, despite state law that unequivocally obligates it to do just that;
- Dollar Phone identifies only cases that are irrelevant to this case and ignores the relevant Commission standard for evaluating discontinuance applications;
- Dollar Phone wrongly claims that the Bankruptcy Court held that Pac-West needs the Commission’s authorization when the court’s order merely acknowledged the FCC’s position as to discontinuances and did not even address Pac-West’s rights under the contract.

¹ *Opposition of Dollar Phone Corp.*, WC Docket No. 07-156, Comp. Pol. File No. 812, at p. 20, filed Aug. 10, 2007 (“Opposition”). References herein to the Affidavit of Asher Gluck appended as Attachment B to the Opposition are cited as “Gluck Aff.”

INTRODUCTION

On July 24, 2007 Pac-West Telecomm, Inc. (“Pac-West”), pursuant to Section 214 of the Act and Section 63.71 of the Commission’s rules, filed with the Commission an application to discontinue services to locations in the Eastern Region served by its New York hub. On the same day, Pac-West sent written notice to all affected customers of the planned shutdown of its operations in the Eastern Region as of August 23, 2007. As explained in Pac-West’s discontinuance application, Pac-West’s exit from the markets comprising its Eastern Region, while regrettable, is necessary in order to successfully reorganize and emerge from bankruptcy with the financial strength to continue serving customers in its remaining states (the “Western Region”), and to preserve the value of Pac-West’s business for its creditors. On July 26, 2007, the Commission issued a public notice seeking comment on the planned discontinuance and stating that absent, further Commission action, Pac-West may discontinue services on or about August 26, 2007. Comments opposing the discontinuance were required to be filed on or before August 10, 2007. Only Dollar Phone has filed an objection.

On July 24, 2007, Pac-West also filed a motion in the Bankruptcy Court seeking an order granting it the relief necessary to discontinue operations in its Eastern Region, and on August 2, 2007, Dollar Phone filed an objection to that motion. On August 9, 2007 the United States Bankruptcy Court for the District of Delaware approved Pac-West’s request to take the steps necessary to exit the Eastern Region, and overruled Dollar Phone’s objection.² After the close of business on August 10, 2007, a week after it filed in Bankruptcy Court and on the very last day of the Commission’s public notice period, Dollar Phone filed its Opposition to Pac-West’s

² As discussed in more detail below, Pac-West is not rejecting its contract with Dollar Phone as it continues to serve Dollar Phone in the Western Region. Instead, Pac-West provided notice pursuant to provisions of that contract that permit Pac-West to exit a region where it serves Dollar on 30-days’ notice.

discontinuance application with the Commission. In so doing, Dollar Phone has placed Pac-West, and the Commission, in the position of having to immediately respond and act in order to avoid jeopardizing the orderly process for disconnecting circuits as set forth in stipulations with all of Pac-West's underlying carriers and approved by the Bankruptcy Court.

Dollar Phone's filing is disingenuous, misleading, omits salient facts and plainly mischaracterizes Commission precedent regarding standards for regulating the market exit of competitive carriers. Most importantly, Dollar Phone's customers do not face a "devastating and catastrophic loss of telephone service." (Opposition at 20.) Based on the Dollar Phone prepaid calling cards that Pac-West has been able to obtain, it is simply not true that "[i]f Pac-West is permitted to discontinue operations on [August 26, 2007], each of several hundred thousand prepaid cards will no longer work." (*Id.* at 8.) In fact, if any of Dollar Phone's local access numbers have not been transferred by the discontinuance date (which Pac-West believes can be accomplished by diligent effort by Dollar Phone), all that the customers need to do is dial the toll-free access number printed on their calling cards to complete their calls. Dollar Phone's customers will suffer no interruption or other loss of service. And Dollar Phone customers will only have to use those toll-free access numbers until the local numbers on their cards are transitioned from Pac-West to Dollar Phone's replacement carrier or Dollar Phone notifies its customers which new access numbers to use, or they obtain another prepaid calling card or use another mode of service in the interim.

Moreover, contrary to Dollar Phone's claims, the Court did not rule that Pac-West needs FCC authorization before disconnecting Dollar Phone's service. Footnote 3 of the Court's order³

³ A copy of the Court's August 9, 2007 order is attached as Exhibit 4 to the attached Declaration of Shawn O'Donnell, Senior Director of CXO, L.L.C., and the Chief Operations

merely states the FCC takes the position that its approval is required for discontinuance of service to the Eastern Region, and the Court specifically stated that “I will say, simply, that my order will provide what it provides and the FCC can determine whether the extent to which under their procedures, it has an impact on their decision” (O’Donnell Decl. at Ex. 5, p. 40, lines 22-25), and the Court later emphasized, “[w]ell, so that the record is clear, and I think my comments such as what they were would indicate this, I am not ruling on that jurisdictional questions [sic].” (*Id.* at p. 43, lines 12-14.) As shown herein, Pac-West has a separate contractual right to “remove a region from its current offering” on 30-days’ notice, which notice was provided to Dollar Phone separate and apart from the discontinuance notice Pac-West provided as to the discontinuance of service in the Eastern Region. (*See* O’Donnell Decl. at Ex. 2.)

Even if the discontinuance standard were to apply to the Dollar Phone services provided pursuant to the Master Service Agreement (“MSA”) between Pac-West and Dollar Phone, Pac-West easily satisfies the Commission’s criteria to discontinue service on or about August 26, 2007. Absent shut-down, Pac-West (and its creditors) would face significant financial harm if it were forced to maintain its network – if, indeed, it was not forced into a precipitous cessation of all remaining service as a result of no longer having the financing it needs to continue in business. Continuation at the request of Dollar Phone would cost approximately \$500,000 per month, with corresponding revenue from Dollar Phone of at most⁴ only \$26,000 per month.⁵ In

Officer of Pac-West. References herein to Mr. O’Donnell’s Declaration are cited as “O’Donnell Decl.”

⁴ Presumably the revenue from Dollar Phone would decrease as services are migrated, yet because Pac-West’s stipulations with underlying carriers require 14 or 15-day notice, Pac-West would continue to bear much of the cost for those migrated services.

⁵ The whole Eastern Region is costing Pac-West \$800,000 to operate with revenues of only \$300,000. As discussed in the Bankruptcy Court on August 9, 2007, the Eastern Region operations are currently losing \$500,000 per month. (O’Donnell Decl. at Ex. 5, pp. 9, lines 20-23, and 23, lines 3-5.)

contrast, Dollar Phone's customers already have available alternative service through use of Dollar Phone's toll-free access numbers. Moreover, other calling cards are readily available in the market at tens of thousands of locations, so customers who do not choose to use the toll-free access option would also have such alternative services readily available to them until the local access number on their Dollar Phone cards have been ported to another carrier.

Because Pac-West easily satisfies the criteria for discontinuance, the FCC should permit Pac-West to shut down its East Coast network on or about August 26, 2007 and need not reach the contract question.

I. THE FCC'S DISCONTINUANCE PROCESS DOES NOT PROVIDE DOLLAR PHONE A MECHANISM TO ABROGATE PAC-WEST'S CONTRACTUAL RIGHT TO REMOVE A REGION FROM ITS SERVICE OFFERING ON 30-DAY NOTICE

Dollar Phone's Opposition to Pac-West's proposal to exit its Eastern Region omits a dispositive fact: the contract between Pac-West and Dollar Phone clearly and unambiguously gives Pac-West the unilateral right to remove regions from its current offering and to exit a current market or region as it deems appropriate in its sole discretion upon 30-days' notice to Dollar Phone. The ability to remove regions on 30-days' notice, which has been in place since December 2004 when Dollar Phone and Pac-West initially entered into the contract, has remained in the contract, unaltered, through repeated contract modifications. (O'Donnell Decl. at ¶ 5.)

Neither Dollar Phone's Opposition nor its affiant Mr. Gluck asserts that this provision is invalid or that Pac-West has failed to abide by the term of the contract. Dollar Phone simply pretends that this provision does not exist.⁶ The Commission, however, should not ignore the

⁶ Dollar Phone's omission of any reference to Section 18 of the MSA is particularly disingenuous given its citation to an inapplicable provision of that same agreement in supposed support for its claim that the parties acknowledged that a longer transition period than 30 days is

unambiguous provision of the contract that authorizes Pac-West to exit markets where it serves Dollar Phone on 30-days' notice. That is because "there is no provision in the Communications Act expressly authorizing the Commission to regulate (i.e. supervise in the public interest) privately negotiated contracts." *Bell Telephone Company Of Pennsylvania v. FCC*, 503 F.2d 1250, 1279 (3d Cir. 1974) *cert. denied*, 422 U.S. 1026 (1975).

It thus follows that the Commission should not authorize Dollar Phone to ignore the express terms of its binding contract with Pac-West simply because Pac-West has filed a discontinuance notice with the Commission pursuant to Section 214 of the Act and the FCC's rules promulgated under the Section 214 regime. *See e.g. Ryder Communications, Inc. v. AT&T Corp.*, 18 FCC Rcd 13603, ¶ 24 & n.78 (2003) ("the long-term health of the communications market depends on the certainty and stability that stems from the predictable performance and enforcement of contracts.") (*citing IDB v. COMSAT*, 16 F.C.C.R. 11474 (2001); *MCI v. FCC*, 665 F.2d 1300, 1302 (D.C. Cir. 1981) ("the Communications Act of 1934 grants the FCC no authority to authorize unilateral changes in agreements."))⁷

appropriate. In so doing, Dollar Phone cites to Section 20.7 of the MSA which governs only the *termination of the agreement*. That termination provision is not applicable here, and Section 18, which governs *the exit from a region*, is the operative contractual paragraph. Pac-West has not sought, and does not seek, to terminate its agreement with Dollar Phone. Pac-West hopes that Dollar Phone will continue to be a valued customer in its Western Region. And even if it were to apply – which it does not – Section 20.7 applies only "providing Pac-West has the necessary and appropriate premises, facilities and interconnection arrangements available."

⁷ The Commission has traditionally observed the "basic rule that statutes in derogation of the common law, particularly those involving contract rights, are strictly construed to preserve all common law rights unless the opposite result is absolutely required by the statute." *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore*, 84 FCC 2d 445, ¶ 96 (1981), and that "[t]here is no explicit denial of common law contractual rights contained in the statute, and in the absence of such express directive, we are not free to infer an implied denial of those rights." *Id.*

A. Dollar Phone's Contract With Pac-West Expressly Permits Pac-West To Exit Markets On 30-Day Notice

Pac-West and Dollar Phone entered into a Master Services Agreement ("MSA") which governs the parties' relationship and the services provided to Dollar Phone. (Gluck Aff. at Attachment.) Under the terms of the MSA, Pac-West has the right to "redefine its regions, add new regions, or **remove regions from its current offering, as it deems appropriate in its sole discretion.** Pac-West will provide Customer with at least 30 days' notice of any change in the definition of Pac-West's regions." (*Id.* at § 18.1 (emphasis added).) Further, the MSA provides that "[i]n the event that Pac-West plans to exit a current market or region, Customer shall be provided with 30 days prior written notification of Pac-West's intent. Customer shall be allowed to immediately terminate services in the affected region without penalty." (*Id.* at § 18.2 (emphasis added).)

These provisions were part of the original agreement between the parties entered during December 2004. Although the contract has undergone numerous amendments over just 2.5 years, these provisions remain unchanged from that initial agreement. (O'Donnell Decl. at ¶ 5.)⁸ Pac-West's other customers in the Eastern Region who have 30-day (or longer) notice provisions for exiting a region did not file in opposition to Pac-West's Bankruptcy Court motion nor at the Commission. These customers are diligently taking the steps necessary to transition their service to alternative carriers by the exit date. (O'Donnell Decl. at ¶ 12.)

⁸ Pac-West notes that several of its customers negotiated longer (i.e. 60-day) notice provisions in Section 18 of their MSAs with Pac-West. Had Dollar Phone felt that 30-days was insufficient time for it to migrate service, it could have done the same. It did not do so, and the 30-day notice term governs. (For the record, Pac-West notes that the customers who have 60-day notice provisions in their contracts are all working diligently to migrate service and expect to have that process completed on or about August 26, 2007. (O'Donnell Decl. ¶ 12.)

Although Dollar Phone and Pac-West agreed that a 30-day notice period was reasonable when they entered the MSA, Dollar Phone now seeks unilaterally to change the term and intent of that agreement – and not by a little. Dollar Phone has indicated it needs to *at least triple* the time period to which it agreed. Dollar Phone offers no legal basis for ignoring well-settled principles of contract interpretation in an attempt to rewrite the parties' agreement. For these reasons, Dollar Phone has no contractual or other basis to claim that its contracted-for 30-day notice period is not reasonable or that it is entitled to a longer period of time.

B. Pac-West Complied With Its Notice Obligation Under The Contract And The Commission's Rules

Pac-West complied with the plain terms of the MSA and provided 30-days' notice to Dollar Phone. Pursuant to the MSA, on July 24, 2007, Pac-West sent Dollar Phone written notice that it was exercising its contractual rights to exit the regions in 24 states and the District of Columbia. (O'Donnell Decl. at Ex. 2.) In addition, and also pursuant to the MSA, Pac-West informed Dollar Phone that it should cease using any of Pac-West's services in the identified regions within 30 days of the date of the notice. (*Id.*) Dollar Phone does not deny that it received this notice 30 days in advance of when Pac-West intended to cease providing service and that the 30-days has been extended to 33-days in light of the fact that the Commission's public notice was issued three days after the written notices were sent.

In fact, not only did Dollar Phone enter into a contract that gives Pac-West the right in its sole discretion to exit a market, Dollar Phone had notice of the possibility of Pac-West's planned exit prior to July 24th, when Ms. Podesto at Pac-West spoke and corresponded via email with Mr. Peter Austin of Dollar Phone as early as July 19, 2007 and advised him of the probability that Pac-West might exit the Eastern Region. (O'Donnell Decl. at ¶ 6.) Dollar Phone had additional notice that service rearrangements were underway when, a month earlier on June 25,

2007, Pac-West notified Dollar Phone that it was discontinuing international services. (O'Donnell Decl. at ¶ 7.)

II. PAC-WEST'S DISCONTINUANCE DOES NOT POSE AN UNDUE HARDSHIP TO DOLLAR PHONE OR ITS PRE-PAID CALLING CARD CUSTOMERS

To the extent the Commission determines it has authority to extend the terms of the 30-day termination provision provided for in the terms of Dollar Phone's contract with Pac-West, the Commission only "retain[s] the right to delay grant of a discontinuance authorization if we believe an unreasonable degree of customer hardship would result." *Rhythms Links Inc. Application to Discontinue Domestic Telecommunications Services*, 16 FCC Rcd 17024, 17025 ¶ 4 (2001) ("*Rhythms*") quoting *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore*, 85 FCC 2d 1 at 9146 (1980). To evaluate whether an unreasonable degree of hardship exists, the Commission examines "whether proper notice has been given, whether customers ... are able to receive service or a reasonable substitute from another carrier, and whether the public convenience and necessity is otherwise adversely affected." *Id.* Dollar Phone's Opposition does not in any way suggest that Pac-West's notice was deficient or that it didn't receive such notice; rather Mr. Gluck's affidavit specifically acknowledges receipt of Pac-West's notice consistent with the Commission's 30-day notice requirement. (Gluck Aff. at ¶ 9.) Thus the heart of Dollar Phone's claim of undue hardship lies in its claim that it lacks sufficient time to transition to alternative carriers and this will pose extreme hardship on its customers who have purchased Dollar Phone calling cards. This claim has no merit for many reasons, including most particularly the fact that Dollar Phone's customers *already have* an alternative means of access available.

A. The Commission's Unreasonable Hardship Analysis Balances the Need for Discontinuance With The Impact On All Customers, Not Just Those Filing Comments With The FCC

Dollar Phone's comments imply that the Commission can determine that a discontinuance poses an undue hardship by assessing the impact of the market exit on one customer, and ignore the impact on Pac-West and the affected customers as a whole. (Opposition at 16-19.) Instead, the Commission has explained that its "standard does not require every customer be migrated before the discontinuance." *Rhythms*, ¶ 8. If the Commission were to adopt that standard, customers of carriers seeking 214 discontinuance authorization could be held hostage by the unreasonable demands of a single customer who simply does not like the price being offered by alternative carriers and wants to gain bargaining leverage. The Commission has recognized this pitfall and has thus avoided the narrow analysis that Dollar Phone now advocates. *See IP Communications Application to Discontinue Services*, 18 FCC Rcd 1890, 1892 ¶ 8 (2003) (customers must "act expeditiously in order to mitigate potential damage. Discontinuance of service does not provide an unlimited opportunity for customers to shop for more favorable deals or to upgrade their service. This is especially true in the case of a bankruptcy where the discontinuing carrier has limited resources to transition customers.") Thus the Commission determines whether it is "satisfied that [the] customers will not, *on the whole*, suffer an unreasonable degree of hardship." *Rhythms*, ¶ 12 (emphasis supplied).

The Commission typically balances four factors in evaluating discontinuance of service under Section 214. These factors include:

- 1) the financial impact on the carrier if required to continue providing service;
- 2) the general need for service and the existence of alternatives;
- 3) the need for the particular facilities; and

4) increased charges for alternative services.⁹

Application of these factors clearly demonstrates that the Commission should allow Pac-West's proposed discontinuance to proceed as planned on or about August 26, 2007. The cases on which Dollar Phone relies to support its Objection offer neither legal analysis nor analogous facts sufficient to warrant delay under the Commission's balancing standard in this case.¹⁰ In contrast, the Commission's resolution of the Rhythms' discontinuance is directly on point. Rhythms involved the reorganization in bankruptcy of a provider of non-basic services (xDSL Internet) in a highly competitive market for which there were reasonable alternatives (dial-up Internet), and the minimal customer objections did not weigh in favor of delaying discontinuance.¹¹

As shown below, the financial impact on Pac-West of not permitting the discontinuance to become effective would be devastating – it would jeopardize not only the Company's ability to obtain continued financing and to emerge from bankruptcy, which could well cause a

⁹ See Section 63.71 *Application of Time Warner Rescom of New York, LLC For Authority to Discontinue Domestic Telecommunications Services*, 19 FCC Rcd. 13173, 13175 ¶ 6 (2004); *AT&T Communications' Application To Discontinue Domestic Telecommunications Services*, 18 FCC Rcd 24376, 24379, ¶ 6 (2003).

¹⁰ For example, Dollar Phone relies on the Commission's Order in Section 63.71 *Application Of LDMI Telecommunications, Inc. For Authority To Discontinue The Provision Of Domestic Telecommunications Services To Payphone Service Providers In Michigan And Ohio*, 18 FCC Rcd 11301 (2003) ("LDMF") claiming that the Commission "prohibited carriers from discontinuing their operations." (Opposition at p. 17). Dollar Phone, however, fails to include any discussion of the facts of this case because there was no dispute for the Commission to resolve through its order, as the applicant voluntarily agreed to a delay for a handful of customers. *LDMI* at ¶ 5 (finding no unreasonable hardship because LDMI "voluntarily agreed to continue to provide services" to specific customers.) See also *In The Matter Of Section 63.71 Application Of Choice One Communications Inc. On Behalf Of Certain Of Its Subsidiaries For Authority To Discontinue Domestic Telecommunications Services*, 20 FCC Rcd 4390, 4393 (2005) (finding no reason to deny discontinuance authorization where applicant "has no objection to continuing to provide service" for an additional 22 days to customer that objected to proposed discontinuance.).

¹¹ See *Rhythms*, 16 FCC Rcd at 17029 ¶ 13.

precipitous disruption of service to Pac-West's Western Region end user and service provider customers and interrupt critical services such as 911 routing.

Additionally, the Commission should not ignore the fact that Dollar Phone is the only Pac-West customer that has filed at either the Bankruptcy Court or at the Commission in opposition to its planned discontinuance.¹² The Commission has previously found the "minimal number of objections ... persuasive evidence" that the "application in large parts satisfies [the Commission's] standard for discontinuance."¹³ Pac-West's other customers, including other prepaid card customers, are diligently working to transition their services within the 30-day termination period. (O'Donnell Decl. at ¶ 12.) That leaves the Commission to balance the very real financial hardship and service disrupting impact on Pac-West and its customers and the fact that only one out of Pac-West's sixty-six customers notified of the Eastern Region shut down has protested to the Commission, against the fact that Dollar Phone customers may have to use a toll-free access number or another calling card or telephone service for a limited time until Dollar Phone finally transitions its numbers to another carrier. As shown below, Pac-West submits that the choice is not a hard one.

B. Pac-West Would Bear An Unreasonable Financial Hardship If It Is Required To Continue To Serve Dollar Phone Beyond The Planned Discontinuance Date

The Commission's balancing of the relevant factors requires the Commission to consider "the impact on the carrier of requiring service to continue, and whether disallowing the discontinuance ... will present unreasonable exit barriers to an applicant." *Rhythms*, ¶ 7. The

¹² See *Time Warner*, 19 FCC Rcd at 13176, ¶ 7 (denying request to delay discontinuance observing that "no other party has filed comments opposing" the application").

¹³ *Section 63.71 Application To Discontinue Service of ACC Telecommunications, LLC and ACC Telecommunications of Virginia, LLC*, 17 FCC Rcd 24754, 24755 ¶ 4 (2002).

Commission has acknowledged that it is “a significant financial burden” for a carrier when it is unable to obtain revenue from a service sufficient to cover the costs of providing service.¹⁴

Here, Dollar Phone asks the Commission to require that Pac-West keep services up past the scheduled disconnection date in twelve states and the District of Columbia – half of the 25 Eastern Region markets. To meet Dollar Phone’s demands, Pac-West would incur approximately \$500,000 a month. (O’Donnell Decl. at ¶ 10, Ex. 3.) Pac-West is unable to maintain these costs, particularly since the estimated revenue from Dollar Phone during that time would be at most \$26,000 per month. (O’Donnell Decl. at ¶ 10.) There can be no dispute that this is “a significant financial burden” for Pac-West. The Commission has traditionally been reluctant to delay discontinuation where such delay results in hardship for the applicant. For example, in *Time Warner*, the Commission approved the applicant’s proposed discontinuance despite an objection, finding it would be “burdensome” for the applicant to “incur costs of approximately \$105,000 to maintain service for an additional month”¹⁵ Because continuation of service for Dollar Phone would cause Pac-West to incur greater costs, the Commission should similarly refuse to require Pac-West to extend service to Dollar Phone for an additional month.

Indeed, given its precarious financial condition, the financial harm Dollar Phone seeks to impose on Pac-West by delaying its exit date is an insurmountable burden. Pac-West’s lender is

¹⁴ See *AT&T Communications*, 18 FCC Rcd at 24379, ¶ 7;¹⁴ see also *Time Warner*, 19 F.C.C.R. at 13175, ¶ 7 (finding burdensome “costs of approximately \$105,000 to maintain service for an additional month.”)

¹⁵ 19 FCC Rcd at 13175 ¶ 7. See also *In The Matter Of AT&T Corporation Application for Authority under Section 214 of the Communications Act, as amended, to Discontinue the Offering of High Seas Service and to Close its Three Radio Coast Stations (KMI, WOM and WOO)*, 14 FCC Rcd 13225, 13229 ¶ 8 (1999) (granting discontinuance despite objections from customers and finding that requiring AT&T to provide service at cost of 5 million per year would be burdensome.).

not willing to finance the substantial losses Pac-West continues to incur in the Eastern Region.¹⁶ Pac-West was recently able to amend its debtor in possession financing facility (the “DIP Facility”) to, among other things, increase the total availability under the DIP Facility in order to be able to continue in business until the projected October emergence date. The budget for this increase approved by the Lender does not include room for the lengthy extension requested by Dollar Phone. (O’Donnell Decl. at ¶ 14.) The costs of the Eastern Network must be eliminated if Pac-West is to have sufficient funding and to emerge from bankruptcy as planned. Moreover, the Lender has indicated it is interested in sponsoring a plan of reorganization for a business that is centered on Pac-West’s operations in the Western Region and Pac-West has been working diligently to that end. (O’Donnell Decl. at ¶ 15.) The DIP Facility requires that Pac-West rapidly eliminate its cash losses from the Eastern Region operations and Pac-West must “hold to a funding budget that makes no room for funding the Eastern Region operations.” (O’Donnell Decl. at ¶ 14.)

If Pac-West is forced to keep its Eastern Region operations running to serve Dollar Phone at a substantial loss, Pac-West’s ability to continue serving customers in its Western Region, and its ability to reorganize and exit bankruptcy, will be severely jeopardized, if not precluded

¹⁶ O’Donnell Decl. at ¶ 14. As noted by the DIP Lender’s counsel at August 9, 2007, Bankruptcy Court hearing (O’Donnell Decl. at Ex. 5, p. 25, lines 3-17):

The shutdown of the eastern network as determined by the Debtor in its business judgment is something that the DIP lender concurs with. It is a predicate to the plan of reorganization that was recently filed and Pac West [Funding’s] commitment to fund the plan is essentially predicated on turning that has been a cash losing business into a business that in the foreseeable future, could turn cash positive.

And, without the immediate shutdown of the east coast network, I don’t see any basis for that to happen. So this is, as [counsel for the Creditor’s Committee and Pac-West] both pointed out, a critical step towards confirming a plan in this case, which will provide an ongoing enterprise and some recovery to unsecured creditors.

altogether.¹⁷ This would create far more significant disruption than any inconvenience to prepaid calling card customers or Dollar Phone, given that, unlike in the Eastern Region, Pac-West serves end users directly in the Western Region and also provides wholesale services that are not provided in the East, such as services to carriers that provide telecommunications services to emergency and essential service organizations and 911 routing and termination services for emergency calls placed by the end user customers of Pac-West's VoIP service provider customers. (O'Donnell Decl. at ¶ 18.) The desire of a single Pac-West customer should not be allowed to jeopardize service for all Pac-West end users, especially emergency service providers and end users those who rely on Pac-West for emergency 911 services.

Dollar Phone places a heavy emphasis on the Commission's order in *e.Spire Application To Discontinue Domestic And International Telecommunications Services*, 17 FCC Rcd 14785 (2002). (Objection p. 18-19.) This emphasis is misplaced because the Commission found the extensions requested and ordered were not burdensome. 17 FCC Rcd at 14788, ¶ 6 n.18. In *e.Spire*, the applicant sought to discontinue high capacity services to customers in several states. The applicant had agreed to continue serving customers that were unable to find alternative carriers beyond the initial 31 day period under § 63.71. *Id.* The Commission, while partially denying the discontinuance application as it applied to the objecting customers, merely extended the discontinuance date by five days for customers in New York and thirteen days for customers in Pennsylvania because such brief extensions "will impose a minimal burden upon" the applicant. *Id.* In contrast, Dollar Phone's requested extension would be burdensome to Pac-West

¹⁷ The DIP Lender and Credit Committee representatives told the Bankruptcy Court on August 9, 2007 that they have independently reviewed Pac-West's decision to exit the Eastern Region and concur in its business judgment that shutdown is necessary to emerge from bankruptcy and to maintain service in Western Region. (O'Donnell Decl. at Ex. 5, p. 22, lines 15 – 21).

and its creditors, lenders, and Western Region customers. In short, the minimal burden that Dollar Phone may suffer is outweighed by the burden to Pac-West and its other customers.

Further, denying Pac-West's exit from bankruptcy would be arbitrary and contrary to long standing Commission policy. The Commission has long recognized that "in a competitive marketplace, ease of exit is essential. If regulatory exit barriers are not lowered, carriers may be discouraged from entering high risk markets for fear that they may not be able to discontinue service in a reasonably short period of time." *Rhythms* at ¶ 11 (internal citations omitted).

C. There Will Be No Unreasonable Hardship On Dollar Phone or Its Customers Given The Availability of Alternative Suppliers

1. There Are Currently Alternative Services Available To Dollar Phone's End Users

Dollar Phone rests its claim of undue hardship on the speculative and misleading assertion that its customers will face a "devastating and catastrophic loss of telephone service." (Opposition at p. 20.) Neither Dollar Phone's Opposition nor Mr. Gluck's Affidavit ever mentions that in the event that a local access number is not ported by the deadline, its customers can continue to use their existing calling cards by dialing the toll-free access number printed on it. Moreover, contrary to Dollar Phone's dramatically sweeping assertions about "devastating" and "catastrophic" impacts, even if access were to be disrupted for a short time until numbers can be ported to Dollar Phone's new carrier, calling card services are not like basic local exchange services for which any disruption can mean an interruption in a user's ability to reach emergency 911 service.

Dollar Phone's claim that Pac-West's exit from the market will mean that "each of several hundred thousand pre-paid cards will no longer work" (Opposition at 8) belies calling card industry practice, as evidenced by the samples of Dollar Phone calling cards that Pac-West was able to obtain. Based on the Dollar Phone cards Pac-West was able to obtain following

receipt of Mr. Gluck's Affidavit, Dollar Phone provides a toll-free access number in addition to the local access number it obtains from Pac-West. (O'Donnell Decl. at ¶ 26.) Pac-West does not provide the service under the toll-free number to Dollar Phone on any of these six cards, and even if a Pac-West toll-free number is included as an access number on any existing Dollar Phone card (which Pac-West does not believe to be the case based on the services it provides to Dollar Phone), the Commission is clearly aware that toll-free numbers can be ported in a matter of hours. Dollar Phone will have plenty of time to accomplish this before the planned discontinuance date and there will simply be *no loss of service to end users*.

In the unlikely event that there might not be a toll-free access number on a Dollar Phone card or an alternate local number provided by Dollar Phone's customer service department, Dollar Phone's prepaid card customers also have numerous alternatives to replace a temporary loss of Dollar Phone's prepaid card service, including other prepaid providers, wireless (including prepaid), payphones, and "plain old telephone" service ("POTS").¹⁸ The Commission has recognized that there is robust competition in the prepaid calling card market and, in 2002, stated that there is "no need for regulation of the prepaid market at this time because there is robust competition in the prepaid calling market."¹⁹ The 2007 FCC Telephone Trends report

¹⁸ See *In The Matter Of AT&T Inc. And Bellsouth Corporation Application For Transfer Of Control*, 22 FCC Rcd. 5662, 5716-17, ¶ 100 (finding that "[c]ertain segments of mass market consumers use ... prepaid calling cards and dial-around services ... as a substitute for subscription long distance services and 'consumers view them as substitutes for presubscribed wireline long distance service'"); *Verizon Communications Inc. and MCI, Inc. Applications For Approval Of Transfer Of Control*, 20 FCC Rcd. 18433, 18478 ¶ 85 (2005) (finding that presubscribed long distance service, mobile wireless service, dial-around services and prepaid calling card services are all substitutable services). See also *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18343 ¶ 94 (2005) (acknowledging that the demand for prepaid card services has dropped significantly due to reductions in the pricing for substitutable services such as long distance and mobile wireless).

¹⁹ *In The Matter Of Telecommunications Relay Services And The Americans With Disabilities Act Of 1990*, 17 FCC Rcd. 21233, 21245 ¶ 26 (2002).

shows that as of October 2005, there were 104 prepaid calling card providers which is almost twice the number from 2004, and prepaid calling card revenue has increased dramatically from \$16 million in 1995 to \$1.6 billion in 2004.²⁰ The Commission has previously allowed discontinuance on the grounds that a combination of services were available as substitutes for the applicant's discontinued service.²¹ Additionally, nothing would stop Dollar Phone from sending a letter or other communications to its distributors and retailers listing new, non-Pac-West access numbers for its card purchases to use if they complain to the distributor.

Dollar Phone's "worst case scenario" claims are equally misleading. Even if there were to be any downtime in the customer's ability to use Dollar Phone's prepaid cards, such a period would only be temporary until Dollar Phone takes the actions necessary to migrate the numbers to a new carrier. The Commission has declined to delay carrier market exits where carriers had alternatives, even if those alternatives were not equal in quality. *See Rhythms*, ¶ 10, n. 22 (finding that "interim dial-up service ... is a reasonable substitute" for carrier's discontinued xDSL service). While a Dollar Phone customer could conceivably – though only in the most extreme of hypotheticals – have to wait to use the calling card until the number is ported, during that time the caller could find another way to make the call such as one of the myriad of other calling cards on the market or use a payphone, wireless (including prepaid), or POTS alternative. All of these services are reasonable substitutes for the prepaid card services Dollar Phone provides to its customers.

²⁰ *Trends In Telephone Service*, Industry Analysis and Technology Division Wireline Competition Bureau, FCC, at p. 15-6 (Feb. 2007).

²¹ *See AT&T High Seas Service*, 14 FCC Rcd at 13231 ¶ 13 (no single provider could replace AT&T's high seas service but "taken together" alternative providers covered all areas served by AT&T).

Again, Dollar Phone seeks refuge in the Commission's decision in *e.Spire*. (Opposition at p. 18). This case is simply not applicable here where Dollar Phone's customers are unlikely to lose service and if there is a disruption in service they have readily available alternatives. In addition to the Commission's finding that the brief extensions requested were not burdensome, there is no comparing the potential loss of service to the financial community discussed in *e.Spire* (17 FCC Rcd at 14787) with the potential temporary loss of access to prepaid cards. As explained in detail in Section II.C above, Dollar Phone's customers have myriad alternative methods for placing calls, including toll-free access numbers, unlike the customers in *e.Spire* that were wholly reliant on the facilities provided by the applicant in that case.²² While Dollar Phone makes unsubstantiated claims that it is like the customers in *e.Spire* that had made progress in transitioning services to alternative carriers, (17 FCC Rcd at 14786) it is Pac-West's experience that Dollar Phone is not acting with the requisite urgency. (O'Donnell Decl. at ¶ 11.)

Finally, the audacity of Dollar Phone's Opposition is self-evident in Dollar Phone's admission that it is unwilling and unable to comply with the laws in a number of states where it operates that require Dollar Phone to provide customers with refunds if their cards do not work. Mr. Gluck contends that Dollar Phone cannot "accommodate a tracking and refund program" and that such a program would be "impractical." (Gluck Aff. ¶ 14.) This contrasts with Dollar Phone's public claims touting its 24-hour, live customer service operations as one of its distinguishing features.²³

²² 17 FCC Rcd at 14786.

²³ See About Dollar Phone, Executive Summary, http://www.dollarphone.com/n_about.asp; see also McKinney's NY PUB. SERV. LAW § 92-f(4)(requiring prepaid calling card providers to "maintain a toll-free customers service telephone number with a live operator to answer incoming calls twenty-four hours a day, seven days a week to receive customer complaints and to provide information").

Dollar Phone instead attempts to off-load its refund obligation on the card distributor at “the point of sale.” (Gluck Aff. ¶ 12.) Dollar Phone is either ignorant of the obligations that a number of states place on pre-paid calling card carriers or simply disregards them. Either way, Dollar Phone is required to track the minutes of use (“MOU”) on its cards in order to decrement PINs and to provide refunds pursuant to state law.²⁴ Dollar Phone’s implication that its customers must possess receipts from the point of sale in order to secure a refund (Gluck Aff. ¶ 14) is equally disingenuous. What better “receipt” for the purchase of a prepaid calling card is there than the calling card and PIN number itself? Dollar Phone has an obligation to provide refunds and certain information about the dollars or minutes remaining on the cards it places into circulation. Whether the holder of the card actually bought the card at a retail establishment is irrelevant. Dollar Phone’s obligation to honor its cards is wholly unrelated to the identity of the customer or the point of sale; the holder of the card is entitled to its use.

2. Dollar Phone’s Claims That It Cannot Move To An Alternative Carrier on a Timely Basis are Equally Misplaced

Any delays that Dollar Phone claims might accrue in its “worst case” scenario fall squarely on Dollar Phone. Pac-West has taken significant steps to ensure that all of its Eastern Region customers, including Dollar Phone, can port Pac-West’s numbers to another carrier by authorizing the NPAC to port any Pac-West numbers in the Eastern Region without further

²⁴ E.g., TX PUC Subst. R. 26.34(g) (requiring prepaid providers to provide customers with “the domestic minutes, billing increments, or dollars remaining on the ... account or ... card”); TX PUC Subst. R. 26.34(g) (j) (requiring prepaid providers to “refund the customer for any unused prepaid calling services or provide equivalent services.”); McKinney’s Pub. Serv. Law § 92-f(5) (“Any company that provides prepaid calling services shall provide a refund to any purchaser of a prepaid calling card or service if the network services associated with the card or service fail to operate in a commercially reasonable manner. The refund required by this section shall be in an amount not less than the value remaining on the card in the form of a replacement card or additional time on the card”). Dollar Phone’s claim suggesting that such a program would overwhelm its call centers is disingenuous and ignores its obligations under state law.

authorization from Pac-West. (O'Donnell Decl. at ¶ 19, Ex. 6.) Further, Pac-West is able to process bulk requests to port numbers (O'Donnell Decl. at ¶ 21, 25), and will process port requests Firm Order Commitments ("FOCs") on the same day the FOC is received. (O'Donnell Decl. at ¶ 24.)

Dollar Phone, on the other hand, does not seem to be moving quickly but instead appears to be spending its time and efforts on seeking judicial and regulatory intervention. For example, Pac-West was scheduled to port 2,437 numbers assigned to Dollar Phone to one of Dollar Phone's alternative carriers, RNK, but on the scheduled date received an email from RNK stating that RNK had "been notified this afternoon that this port needs to be postponed until the customer is ready." (O'Donnell Decl. at ¶ 23, Ex. 7.)

Dollar Phone's further claims that its ports from Pac-West will necessarily go beyond the planned August 26, 2007 discontinuance date are unavailing. Several of Dollar Phone's likely alternative carriers, including RNK and Level 3,²⁵ have an automated portability capability and are using that capability to submit high volume porting request for other Pac-West customers in Pac-West's exit markets. (O'Donnell Decl. at ¶ 22.) Nor is it necessary for Dollar Phone or its new carrier to obtain and file individual Letters of Authorization to port numbers from Pac-West. (O'Donnell Decl. at ¶ 28.) The concerns Dollar Phone raises in its Opposition are simply not legitimate reasons to delay Pac-West's discontinuance.

3. Dollar Phone's Unsupported Reference to a Cost of Service Increase Does Not Justify a Delay in the Discontinuance.

Mr. Gluck's Affidavit refers to the fact that he is currently negotiating with another carrier to replace Pac-West's Eastern Region services in their entirety, and alludes to that fact

²⁵ These two carriers are "likely" because, as Mr. O'Donnell's Declaration shows, Dollar Phone already has local access arrangements with both. (O'Donnell Decl. at ¶ 26.)

that the new carrier will charge Dollar Phone twice what it is paying to Pac-West for the service. (Gluck Aff. at ¶ 22.) The Objection does not rely on this unsupported assertion – and with good reason. Although it considers increased costs as a factor to be reviewed, the Commission has held that, where other factors justify discontinuance, the mere fact of a cost increase to one customer does not justify taking the extraordinary step of requiring a carrier to continue.²⁶ That should be particularly self-evident in a bankruptcy context, where the reason that a carrier is exiting a region or a service is because it is losing substantial amounts of money on the services in question. Requiring Pac-West (and its creditors) to continue losing huge sums so that Dollar Phone can profit from that loss would turn bankruptcy law on its head. As aptly put by counsel for the Official Creditor’s Committee at the Bankruptcy Court on August 9, 2007 (O’Donnell Decl. at Ex. 5, p. 22, line 16 – p. 23. line 20):

We do think, Your Honor, that it is very possible that allowance of this [Eastern Region discontinuance] today, may well be the difference between confirmation of a plan of liquidation and the confirmation of a plan of reorganization in this case, and that is an important distinction. Not just for the treatment of unsecured creditors but for the well being of those who are continued to be employed by the company. ... [W]hat Dollar would like and you can’t blame them for asking it, is for the other unsecured creditors to subsidize their claim.”


²⁶ See *In The Matter Of Section 63.71 Application Of Choice One Communications Inc. On Behalf Of Certain Of Its Subsidiaries For Authority To Discontinue Domestic Telecommunications Services*, 20 FCC Rcd 4390, 4393 ¶ 7 n.20 (2005) (Commission found that “in balancing all of the factors” the 33% increased costs of an alternative carrier did not “justify a denial of [the] request to discontinue services.”).

CONCLUSION

For the aforementioned reasons, the Commission should not delay Pac-West's discontinuance of service in its Eastern Region.

Dated: August 13, 2007.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jean L. Kiddoo". The signature is fluid and cursive, written over a horizontal line.

Jean L. Kiddoo

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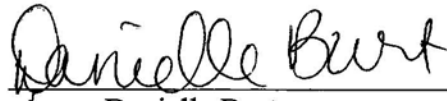
Counsel for Pac-West Telecomm, Inc.

A/72156367

CERTIFICATE OF SERVICE

I, Danielle Burt, herby certify that on August 13, 2007, I have caused a copy of the Pac-West Telecomm, Inc. Reply in Support of Application to Discontinue to be served via electronic mail on the following:

Peter A. Rohrbach
Yaron Dori
HOGAN & HARTSON LLP
555 13th Street, N.W.
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parohrbach@hhlaw.com
ydori@hhlaw.com

A handwritten signature in cursive script, reading "Danielle Burt", is written over a horizontal line.

Danielle Burt

DECLARATION OF SHAWN O'DONNELL

I, Shawn O'Donnell, hereby declare that the following is true and correct to the best of my knowledge, information and belief:

1. My name is Shawn O'Donnell. I am a Senior Director of CXO, L.L.C., and the Chief Operations Officer of Pac-West Telecomm, Inc. ("Pac-West"). My responsibilities include managing the organizations that plan, engineer, implement, provision, and maintain Pac-West's telecommunications network, facilities, and systems. As part of these responsibilities I have spoken with Dollar Phone Corp. ("Dollar Phone") on several occasions regarding how Pac-West can assist them in migrating their services off of Pac-West's network.

2. I have 19 years of telecom experience, starting with Potomac Edison. After leaving Potomac Edison, I joined MCI in 1988, advancing through various management positions in provisioning, engineering, planning, and construction operations. After a successful career of more than 11 years at MCI, I became Executive VP - Network Services and Systems at PathNet Telecommunications in 1999, a start-up telecommunications company developing an IP centric next generation network supporting local, long distance and Internet services. I joined CTA, a technology industry financial and operational advisor, in early 2003, where I was responsible for leading the teams advising the creditors in telecom and technology restructurings. In 2005 I became Chief Operating Officer of CTA, and held that position through the end of 2006. I am a board member of Shared Technologies and Arbinet-theexchange, Inc. I received my BSEE degree from Pennsylvania State University and my MSEE from Virginia Polytechnic and State University.

3. The purpose of this affidavit is to describe the services Pac-West provides to Dollar Phone and the efforts Pac-West has taken to assist its customers, including Dollar Phone, to transfer services to alternative providers in the Eastern Region that Pac-West is exiting effective August 26, 2007.

CONTRACT AND NOTICE

4. Pac-West and Dollar Phone entered into a Master Service Agreement ("MSA") in December 2004. Under the MSA, Pac-West provides Dollar Phone PSTN OnRamp and IFEX¹ services. Pac-West provides these telecommunication services to Dollar Phone both in its Western and Eastern Regions.

5. The MSA, in Sections 18.1 and 18.2, gives Pac-West the right to exit a region by providing Dollar Phone thirty (30) days' advance notice. Although the MSA was amended on numerous occasions after it was entered in December 2004 (Exhibit 1 attached), none of these

¹ Although Dollar Phone has established IFEX trunks, Pac-West network studies show no usage on those trunks.

amendments relates to any of the issues before the FCC nor did they alter in any way the relevant provisions of the MSA that apply here. In fact, the parties have never amended the provisions of Sections 18.1 and 18.2 pertaining to the notice required when and if Pac-West discontinues service in a particular region or regions.

6. On July 24, 2007, prior to issuance of the press release announcing Pac-West's exit from the Eastern Region, Eric Jacobs, Vice President of Sales, and Melissa Podesto at Pac-West personally called Mr. Peter Austin, Sr. V.P. Business Development of Dollar Phone to advise him of Pac-West's decision to exit the Eastern Region. In addition, I understand that Ms. Podesto has had numerous telephone conversations and corresponded via email with Mr. Austin of Dollar Phone. As shown in Exhibit 9 (attached), Ms. Podesto advised Mr. Austin in writing as early as July 19 of the very real potential that Pac-West would be shutting down its Eastern Region network. The email from Mr. Austin was prompted by a series of phone calls between Ms. Podesto and Mr. Austin during the week of July 9, 2007. I understand that during these phone calls, Ms. Podesto similarly advised Mr. Austin of the potential shut-down of Pac-West's Eastern Region network.

7. On July 24, 2007,² Pac-West also sent two separate written notices pursuant to (i) Sections 18.1 and 18.2 of the MSA informing Dollar Phone that it was exercising its right to exit the Eastern Region and providing Dollar Phone thirty (30) days' prior notice of its date of market exit; and (ii) Section 63.71 of the Commission's Rules notifying Dollar Phone that it intended to discontinue all service in the Eastern Region as of August 23, 2007. (Exhibit 2 attached). On June 25, 2007, Pac-West had also sent Dollar Phone a notice that it was discontinuing all international services.

8. Although Pac-West exercised its contractual right to exit the Eastern Region pursuant to Section 18 of the MSA, it did not notify Dollar Phone of any intent to exit the Western Region or to terminate the MSA. Pac-West continues to provide services to Dollar Phone in the Western Region pursuant to the MSA. In short, the contract has not been terminated by either party.

9. In order for Pac-West to maintain its network to continue to provide service to Dollar Phone after August 26, 2007, Pac-West would incur significant costs which its debtor-in-possession ("DIP") lender has made clear that it will not continue to fund either during the bankruptcy or upon emergence from bankruptcy.

10. Dollar Phone seeks to have Pac-West continue to provide services past the scheduled disconnection date in 12 states and the District of Columbia – half of the states in the Eastern Region that are being exited. In order to do so, Pac-West would incur \$122,000 per month in order to maintain its collocation space, SS7 links and power (regardless of whether Dollar Phone needs Pac-West service in one or all 24 states plus the District of Columbia), and would incur the costs associated with maintaining the circuits used to provide service to Dollar Phone at over \$382,000 a month. (Exhibit 3 attached.) Notwithstanding costs of over \$500,000, the revenue it would receive from Dollar Phone would only be approximately \$26,000 per month (based on its June, 2007 invoice).

PAC-WEST'S EFFORTS TO WORK WITH DOLLAR PHONE

11. I have personally spoken with Mr. Gluck a number of times to offer Pac-West's assistance in transitioning the services Dollar Phone purchases from Pac-West in the Eastern Region to a replacement carrier. Ms. Podesto has also kept in close contact with Mr. Austin. Initially, we set up conference calls with Dollar Phone in an attempt to assist them move their services to other carriers. On July 31, 2007, Ms. Podesto held her regular, weekly conference call with Dollar Phone at which time they discussed the transition of Dollar Phone's services and Dollar Phone representatives advised Ms. Podesto that Dollar Phone would not be able to transition its services by August 23, 2007, the date in our notice letter. On August 6, 2007, Ms. Podesto and I spoke with Mr. Austin who asked if we could postpone the call because he was still waiting to hear back from potential replacement carriers. On August 7, 2007, Mr. Hawn of Pac-West called a potential replacement carriers whose name was provided by Dollar Phone and spoke with that carrier about expediting Dollar Phone's orders. On August 8, 2007, I spoke with Mr. Gluck and Mr. Austin about potential alternatives to Pac-West's services. On August 9, 2007, I emailed Mr. Gluck the information he requested concerning the costs of maintaining Pac-West's network for an additional month to provide service to Dollar Phone. (See Exhibit 3.) To date, Mr. Gluck has not responded to my email.

PAC-WEST'S EASTERN REGION NETWORK

12. Pac-West's network in the Eastern Region consists of a switch and transport leased from other carriers. In the Eastern Region, which includes 25 states (including the District of Columbia), Pac-West provided notice of its intent to exit the Eastern Region to 66 customers. Of the 66 customers provided notice, Dollar Phone is the only customer that filed an objection to Pac-West's notice of market exit in the Bankruptcy Court and the only entity that filed an objection at the Commission. Contrary to Dollar Phone's claims, Dollar Phone is not Pac-West's largest customer in the Eastern Region, nor is Dollar Phone Pac-West's only TDM customer in the Eastern Region. All other customers, large and small, TDM and SIP-based, and including other carrier customers that offer prepaid calling cards, are working cooperatively with Pac-West to transition their telephone numbers to other service providers on or about August 26, 2007. Even those customers that negotiated longer (i.e. 60-day) notice provisions in Section 18 of their MSAs are working diligently to migrate service and expect to have that process completed on or about August 26, 2007.

13. As part of the bankruptcy, Pac-West has been working diligently to improve its profitability and to reduce costs and unnecessary obligations to return the company to its historical profitability. Pac-West has collaborated closely with its creditors, carriers, vendors, and its DIP lender to explore its options. Pac-West has concluded that the markets served by Pac-West's Eastern Region network are likely to continue to operate at a substantial loss for the foreseeable future and that these losses are not sustainable.

14. Pac-West is dependent on financing provided by its DIP lender to continue its daily operations. The DIP lender has informed Pac-West that it does not support the continued financing of losses incurred in the Eastern Region and that Pac-West must hold to a funding budget that makes no room for funding the Eastern Region operations. In fact, Pac-West was running out of money even under its DIP, and needed additional financing for September. It arranged for that financing and has a motion on file to approve an additional \$5 million to fund Pac-West through Plan confirmation and exit from Chapter 11 in October, but the additional financing is premised on, and the budgeting assumes, a rapid shutdown of the Eastern Region. Moreover, parties with whom Pac-West has had discussions regarding purchasing the assets of Pac-West or funding a plan of reorganization have all made clear that such transactions would not include the Eastern Region because of the losses it is incurring.

15. Regrettably, after much consideration Pac-West has determined that exiting the Eastern Region is essential to Pac-West's ability to successfully reorganize. On August 9, 2007, the Bankruptcy Court granted Pac-West's motion to discontinue service in the region as being "in the best interest of the Debtors, their estates, creditors and other parties in interest" and overruled the objection to the motion filed by Dollar Phone ("Order"). (Exhibit 4 attached, at 2.) The Bankruptcy Court gave Pac-West permission to reject contracts and circuits that make up the Eastern Region. A copy of the transcript of the Bankruptcy Court hearing on August 9, 2007 is attached as Exhibit 5.

16. Pursuant to this Order, Pac-West will submit requests with its underlying carriers to disconnect the facilities that make up Pac-West's Eastern Region network. These requests all have a due date for disconnection on or about August 26, 2007. Under the terms of stipulations reached with underlying carriers, these requests must be placed by August 13, 2007 in order for Pac-West to cease incurring the costs of service as of August 26, 2007. Once these facilities are disconnected, Pac-West will not have an Eastern Region network in place to provide service to Dollar Phone.

17. Maintaining service in the Eastern Region as requested by Dollar Phone will put at risk the continued availability of financing for operations in all markets and will place the Company in jeopardy of a precipitous disruption of service to customers in all regions, East and West. Simply put, if Pac-West continues to try to provide service to both the Eastern and Western Regions Pac-West will be unable to successfully reorganize and emerge from bankruptcy.

18. If Pac-West cannot reorganize and emerge from bankruptcy, there is a serious risk that Pac-West will be forced to discontinue service to all of Pac-West's customers in all locations. Discontinuance of service in the Western Region would cause more significant disruption to customers as a whole than the effect on Dollar Phone of shutting down the Eastern Region. In the Western Region, Pac-West provides services to end users as well as other service providers, including carriers that provide telecommunications services to emergency and essential service organizations. In the Western Region, Pac-West also provides 911 routing and termination services for 911 calls placed by the end user customers of Pac-West's VoIP service provider customers.

LOCAL NUMBER PORTABILITY

19. Pac-West has authorized the Number Portability Administration Center ("NPAC") to port-out any Pac-West numbers in the Eastern Region without further authorization from Pac-West. (Exhibit 6 attached.)

20. Mr. Gluck's Affidavit makes much of the time that it took for certain Dollar Phone numbers to be ported-in to Pac-West. At the time Dollar Phone turned up its service with Pac-West, Pac-West was the porting carrier and was processing local number portability ("LNP") requests manually. Thus Pac-West was responsible for making the request and engaging in all of the activities required of the porting-in carrier.

21. Based on my knowledge of the industry, and in contrast to the manual process that Pac-West used to port Dollar Phone's numbers in to Pac-West's network, I understand that major carriers have automated the LNP order submission process either through their own backend offices or through third-party vendors such as Neustar, Synchronoss and Wisor. Automated LNP order submission process will allow for submission of high volumes of LNP orders through NPAC, not the 50-per-day submission rate alleged by Dollar Phone.

22. My understanding that most carriers have automated their LNP order submission process has been confirmed by the large volume LNP requests that Pac-West has received for its customers to date, including Dollar Phone. Pac-West recently received and authorized port-out requests that involve thousands of, and in some cases over 15,000, numbers. Pac-West processed nearly 16,300 ports in a single order to Level 3 and the numbers are scheduled to transfer on August 13, 2007. Pac-West processed another 5,000 port out requests in a single order to Level 3 scheduled for August 15, 2007. Pac-West has also processed multiple port-out orders from RNK, totaling well over 3,000 numbers, scheduled to occur August 15, 2007 through August 20, 2007. Finally, Pac-West has also processed 2,000 to 3,000 ports to PaeTec. These are merely a few examples of the large-volume port-out requests that Pac-West has recently received from replacement carriers and processed for customers who diligently took action upon receipt of the disconnect notices. Given this experience, coupled with automated LNP systems, Pac-West's communication with NPAC, and Pac-West's same-business-day processing of port-out requests, Pac-West is confident that the Company will be able to respond to all port-out requests submitted for Dollar Phone's numbers in a similar fashion.

23. On August 9, 2007, the same date as the bankruptcy hearing on Pac-West's motion to reject Dollar Phone's contract, 2,437 numbers that Pac-West has assigned to Dollar Phone in Florida were scheduled to be ported to RNK, a replacement carrier selected by Dollar Phone. On August 8, 2007, however, Pac-West received an email from RNK stating that "[w]e have been notified this afternoon that this port needs to be postponed until the customer is ready." (Exhibit 7 attached.)

24. As the porting-out carrier, Pac-West will not be a source of delay in completing Dollar Phone's number portability requests. Pac-West has set up procedures to authorize the processing of port-out requests promptly. As the porting-out carrier, Pac-West's

only responsibility is to concur in the port-out and confirm the date on which the porting-out carrier will release the number so the porting-in carrier can complete the port, update industry call-routing data bases and begin providing services under that number. Pac-West has been responding to, and will continue to respond to, FOCs on the same business day that Pac-West receives the port-out request, and Pac-West has not been rejecting, and will not reject, any port-out requests associated with the Eastern Region. Pac-West's response timeframe is well under the normal 3-business day timeframe allowed to respond to a port-out request. Further, under NPAC procedures, if Pac-West does not respond to a port-out request, then the porting-in carrier can take the telephone number after that time.

25. In addition Pac-West has worked with NeuStar in the past on bulk port requests. Carriers that use NeuStar's services can complete a large number of ports via a bulk load process as opposed to submitting them individually. Pac-West stands ready to work this process if requested to accomplish porting its customers' telephone numbers to another network.

26. I have been able to obtain six examples of Dollar Phone pre-paid calling cards and attach them as Exhibit 8. I was interested to note that of these six cards, four do not contain any local numbers assigned to Pac-West. Four of the cards ("Bean Town," "Coffee Time, Call Me Time" and "Martini") contain local access numbers assigned to RNK, and the local access numbers listed on the "Los Inmigrantes" calling card are all assigned to Level 3. Only the local numbers on the "Los Tigres del Norte" and "El Gigante" calling cards are assigned to Pac-West. It is therefore clear that Dollar Phone already has existing connections to and service arrangements with RNK and Level 3.

27. Both RNK and Level 3 use services that provide an automated local number portability process and are already submitting high-volume port requests on behalf of other Pac-West customers. Indeed, as noted in paragraph 23, on August 1, 2007, RNK submitted an automated port request for 2,437 telephone numbers that Pac-West has assigned to Dollar Phone in Florida, which request was mysteriously withdrawn on the date of the bankruptcy court hearing on the ground that Dollar Phone was not "ready." And as noted in paragraph 22, Pac-West has already received large volume port orders from both RNK and Level 3.

28. It is not necessary for Dollar Phone or its replacement carrier to file individual Letters of Authorization ("LOAs") for each assigned number with the NPAC before completing ports. Number porting proceeds on the honor system unless there is a complaint about an unauthorized transfer ("slam") of a number. NPAC requires that the porting-in vendor hold a LOA from its customer to submit a porting-in order. I am not aware that any number portability vendor who provides submission and management of LNP orders requires their carrier customers to furnish LOAs to them or to NPAC. I am also not aware of any number portability vendor who requires that a separate LOA be obtained for each number to be ported. For example, Level 3 ported 16,282 telephone numbers assigned to another Pac-West customer using a spreadsheet process. Dollar Phone can execute a single LOA that includes all numbers it wishes to port from Pac-West and provide it to its new carrier. In fact, at their request, Pac-West is furnishing its Eastern Region service provider customers listings of telephone numbers assigned to them for just that purpose.

29. In addition to the efforts described above, Pac-West is actively monitoring the porting of all of its numbers as one of several ways in which it is keeping tabs on its customers' progress in migrating off the Pac-West network. Pac-West will take "snapshots" as the porting process continues to determine what numbers have been ported out, what numbers remain, and of the numbers that do remain, which numbers are active. Pac-West accomplishes this by performing a database "dip" on NPAC for the numbers allocated to Pac-West. If the Service Provider ID has been changed, the number has been successfully ported to another carrier. Some of the numbers may be returned to Pac-West if the customer chooses to use new telephone numbers assigned by its replacement carrier. In such cases, the numbers would be "inactive" because the customer would no longer be receiving any service from Pac-West. For the numbers that continue to be associated with Pac-West, Pac-West will determine whether there are any recent minutes of use ("MOU"). If there are MOUs for that number, Pac-West will contact the customer to determine the status of the port. As has been described, Pac-West is being proactive in assisting customers to move to other carriers in all respects.

NETWORK CAPACITY AND USAGE

30. Pac-West and Dollar Phone did not turn up initial trunks to connect their switches in New York until November of 2006. These connections in New York permit Dollar Phone to use Pac-West's services in the Eastern Region.

31. Pac-West's network traffic studies show that peak usage for Dollar Phone in the Eastern Region is approximately seven DS-3s. Although Dollar Phone has turned up more than seven DS-3s with Pac-West in New York, based on my review of the traffic studies, sound network planning does not require Dollar Phone to maintain more than seven DS-3s.

32. Mr. Gluck indicates that Dollar Phone's replacement carrier will be able to accommodate Dollar Phone's traffic with "minimal" changes to its capacity. If only minimal changes are necessary, it is not clear to me why it would take Dollar Phone until the end of October, 2007 to port all of its numbers to the replacement carrier.

CUSTOMER IMPACT

33. Pac-West has no specific information about Dollar Phone's customers and is therefore not able to comment on the number of customers that might be affected if Dollar Phone does not transition to replacement services by August 26, 2007. However, the claims Mr. Gluck makes concerning the "devastating" effect on consumers and in particular the claim that "each of several hundred thousand pre-paid cards will no longer work" and that "there would be no commercially reasonable way for Dollar Phone to track and provide refunds for these cards" (Gluck Aff. ¶¶ 11, 14) are not accurate.

34. First of all, the standard practice in the calling card industry is for calling cards to contain a toll-free access number in addition to any local access numbers that can be used to

place calls. All six of the Dollar Phone pre-paid cards attached as Exhibit 8 show a toll-free access number in addition to the local access numbers. Therefore, in order for the cards to "no longer work" as stated by Mr. Gluck, those 8XX access numbers would have to be unavailable. As Mr. Gluck surely must know, an 8XX number can be ported to another carrier in a matter of hours and, in any event, the 8XX access numbers on the Dollar Phone prepaid cards provided in Exhibit 8 are not assigned to Pac-West.

35. Even if, under some strange circumstance, a caller was unable to make a call using the toll-free number on the calling card, all of the calling cards also contain a toll-free customer service number that a user could call in order to obtain an access number, toll-free or otherwise, from Dollar Phone.

36. Mr. Gluck also claims that Dollar Phone could not issue refunds to the affected calling card users because establishing a refund program would not be "practical." He contends that Dollar Phone's customers would have to contact the vendors from whom they purchased the cards and present a receipt to initiate the refund process. I disagree with his assertion. A user would properly call the toll-free customer service number on the card itself, and not the distributor, if the card does not function. Once the customer calls Dollar Phone's customer service number, the customer should have several options.

37. First, Dollar Phone could give the customer a toll-free access number or, if available, a local telephone number provided by another Dollar Phone service provider.


38. Second, Mr. Gluck has stated that Dollar Phone will be able to port its telephone numbers to other carriers in several states prior to August 26, 2007, and that several other states would be completed near or on that date. If a card does not function on August 27th it is not that the card is no longer valid, only that those numbers that Dollar Phone has not yet ported will not work for a small window of time. When the end user tries that same number again, once Dollar Phone has ported it to their new carrier, it will function properly. Therefore, the Dollar Phone customer service representative could tell the customer when the number will work again, in other words, when the port is expected to be completed such that the number will be served by another carrier.

39. Finally, as a last resort, if a Dollar Phone customer service representative cannot give an alternative number, Dollar Phone could issue a refund to its customer. Mr. Gluck claims that Dollar Phone would have to order and provision circuits to increase capacity in its call centers to handle the added traffic volume for customer refunds. However, Mr. Gluck ignores the fact that the issue of refunds may not apply at all or only for a small subset of the number of the cards that utilize Pac-West numbers today. Mr. Gluck also claims that Dollar Phone cannot accommodate a tracking and refund program because customers paid cash and are "unlikely to possess a receipt." This ignores the fact that the customer does possess the card which ought to be a better proof of purchase than the receipt. As the carrier providing the telecommunications service, it is Dollar Phone's responsibility to issue a refund or replacement card to the customer whose service is impaired. In order to debit the number of minutes on a card, Dollar Phone must maintain a platform that keeps track of the amount of money and/or minutes the customer has used on the card and the amount of money and/or minutes that remain

on the card. The customer should therefore be able to call Dollar Phone's customer service representative, provide the PIN number associated with the card, and receive a refund, credit, or replacement card for the amount of money/minutes remaining for that PIN.

Declaration of Shawn O'Donnell
Page 10

I declare under penalty of perjury that the foregoing is true and correct. Executed this
15th day of August, 2007.


Signature

DECLARATION OF SHAWN O'DONNELL EXHIBITS

WC Docket No. 07-156

August 13, 2007

Declaration of Shawn O'Donnell
WC Docket No. 07-156
August 13, 2007

EXHIBIT 1

Master Service Agreement and Amendments



Master Services Agreement

1776 W. March Lane, Suite 250 • Stockton, CA 95207 • 1-800-399-1234 • Fax (209) 926-4140

12/21/05

This Master Services Agreement ("Agreement"), entered into as of 9 (the "Effective Date"), by and between PacWest Telecomm, Inc., hereinafter "PacWest", whose business address is 1776 W. March Lane, Stockton, California 95207, and Dollar Phone Corp., hereinafter "Customer", whose business address is 232 Broadway Brooklyn, NY 11211.

WHEREAS, PacWest is a duly authorized carrier of local exchange and interexchange telecommunications services within the State of California and other states; and

WHEREAS, Customer is a Service Provider; and

WHEREAS, Customer desires that PacWest provide service as described in this Agreement and specified by Service Order Acknowledgements ("SOAs") signed by Customer, PacWest shall provide service to Customer, and Customer agrees to accept the services ordered by an executed SOA, the terms of which are incorporated herein by this reference. Such services shall be provided in accordance with the rules, terms, and conditions described herein and in the SOA. Customer authorizes PacWest to conduct a credit check and acknowledges that initiation of service under this Agreement is contingent upon PacWest's approval of Customer's credit.

NOW THEREFORE, PacWest and Customer hereby agree as follows:

Service Descriptions

Managed Dial Access (Hourly) Service is an inbound dial service in which PacWest provides Customer with access numbers, switch ports, modem ports, IP addresses, proxy authentication, and internet access for the purpose of allowing Customer's subscribers to access the internet via Customer's service offering. Customer billing is based on hours of usage per billing cycle and is invoiced in arrears. Customer indicates choice of term of this service on the accompanying Price Sheet. The installation date of the initial SOA for Managed Dial Access (Hourly) Service is the effective date of the service term, and any subsequent SOAs executed by Customer shall expire co-terminously with the expiration of the service term as indicated in the initial SOA.

Managed Dial Access (Port) Service is an inbound dial service in which PacWest provides the Customer with access numbers, switch ports, modem ports, IP addresses, proxy authentication, and internet access for the purpose of allowing Customer's subscribers to access the internet via Customer's service offering. Customer billing is based on number of modems installed at Customer request and is invoiced in advance.

Dial Access Service is an inbound dial service in which PacWest provides the Customer with access numbers, and switch ports for the purpose of allowing Customer's subscribers to access Customer's services. Customer billing is based on number of ports installed and assigned to Customer and is invoiced in advance.

Wholesale Internet Bandwidth Service is an internet access service in which PacWest provides the Customer with internet access and IP addresses for the purpose of allowing Customer and/or Customer's subscribers to access the internet via Customer's service offering. Customer billing is based on Megabits per second of bandwidth ordered and installed and is invoiced in advance.

Colocation Service is a secure site service in which PacWest provides the Customer with cabinets, power, cross-connections, all in sites secured by electronic badge access, surveillance, and fire suppression services, for the purpose of providing Customer with a location close to the edge of PacWest's switches and edge routers to securely store their equipment. Customer billing is based on services ordered and installed and is invoiced in advance.

PSDN On Ramp Service is a calling service which enables the completion of inbound and outbound calls to and from the Public Switched Telephone Network ("PSDN") via interconnections between Customer's Network and PacWest's Network. Customer billing for fixed cost circuit components are billed in advance and all usage is billed in arrears.

Private Line Service is a point-to-point service in which PacWest provides the Customer with private lines for the purpose of providing Customer with site-to-site connectivity. Customer billing is based on services ordered and installed and is invoiced in advance.

In addition to the initial installation date serving as the effective date of the service term for each installed service, the installation date of each subsequent SOA for services denoted with an "S" is the effective date of the service term for each subsequent SOA executed by Customer. The term of the service is shown on the SOA.

General Terms

1.0 Ancillary Services

PacWest offers a number of ancillary services. The current prices for these ancillary services are shown in the Pricing sheet accompanying this Agreement. Any other provisions in this Agreement notwithstanding, the prices and terms for all ancillary services are subject to change at any time.

2.0 Charges, Billing, Payment, and Disputes

2.1 Charges for the space, facilities, equipment, power and services provided by PacWest under this Agreement are set forth in the Pricing sections of this Agreement and are subject to change as provided for in Section 7.0 provided herein.

2.2 PacWest will bill Customer monthly, with recurring charges being

billed in advance and any usage charges billed in arrears. Bills are due when issued, and payable within 25 days after the bill is rendered. Payments are past due if PacWest or its agents does not receive them within 25 days of the bill date. Any amounts past due will be subject to a late payment charge accruing at the rate of 1-1/2% per month, or portion thereof, until paid. In addition, bills not paid within 30 days of the bill date, that are not subject to a legitimate dispute, may result in suspension of access privileges to PacWest's collocate facility if customer is collocated until the full amount of the bill is paid. Bills not paid within 40 days of the bill date, that are not subject to a legitimate dispute, may result in service interruption. Customer agrees to pay all costs incurred by PacWest in collecting any unpaid amounts, including attorneys' fees.

2.3 In the event that a billing dispute occurs concerning any charges billed to Customer by PacWest, Customer must submit a documented

Customer



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claim for the disputed amount. Customer will submit all documentation as may reasonably be required to support the claim. All claims must be submitted to Pac-West within one hundred and twenty (120) days of receipt of billing for those Services. If Customer does not submit a claim as stated above, Customer waives all rights to file a claim thereafter.

3.0 Indemnification and Liability

3.1 Customer shall defend, indemnify, and hold harmless Pac-West, its officers and directors, employees, and agents from and against any and all lawsuits, claims, demands, penalties, losses, fines, liabilities, damages, and expenses (including attorney's fees) of any kind and nature (including, without limitation, liability to third parties for personal injury or death and for loss or damage to property, and loss or damage to Pac-West's property, and injury to Pac-West's employees), without limitation whatsoever, that in any way arise out of or result from Customer's operations, installation or maintenance of equipment and facilities, or performance under this Agreement, or that arises out of or in any way is connected with Customer's provision of service to its end users, or any use or attempted use by Customer or any such end user of services provided by Pac-West hereunder, provided that this section shall not apply to the extent that any injury, loss, or damage is caused by the gross negligence or willful misconduct on the part of Pac-West.

3.2 Pac-West's liability, if any, for damages arising out of its negligent acts, or mistakes, omissions, interruptions, delays, errors, or defects during the course of furnishing service, shall in no event exceed an amount equivalent to Pac-West's charges for service during the period affected by such negligence, or in which such mistakes, omissions, interruptions, delays, errors, or defects occurred. Any mistakes, omissions, interruptions, delays, errors, or defects that are caused by or materially contributed to by the negligence or willful acts of Customer, or that arise from facilities or equipment used by Customer and not provided by Pac-West, shall not result in the imposition of any liability upon Pac-West.

3.3 Pac-West will not be liable for any act, omission to act, negligence, or defect in the quality of service of any underlying carrier or other service provider whose facilities or services are used in furnishing any portion of the service received by Customer. Pac-West will not be liable for any failure of performance that is caused by or the result of any act or omission by Customer or any entity other than Pac-West, that furnishes services, facilities, or equipment used in connection with Pac-West's services or facilities.

3.4 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, PAC-WEST MAKES NO EXPRESSED OR IMPLIED REPRESENTATIONS, OR WARRANTIES, INCLUDING ANY WARRANTIES REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3.5 IN NO EVENT SHALL PAC-WEST BE LIABLE TO CUSTOMER FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST PROFITS OR REVENUE).

4.0 Force Majeure

Neither party shall be responsible for delays or failures in performance, except for the obligation to make payments required under this Agreement, resulting from acts or occurrences in the nature of force majeure such as fire, explosion, acts of God, war, or civil commotion; any law, order, regulation, or ordinance of any government or legal body; strikes; or delays caused by the other party. In such event, the party affected shall, upon giving prompt notice to the other, be excused from such performance to the extent of such interference. The affected party shall use its reasonable efforts to avoid or remove the cause of non-performance and both parties shall proceed to perform with dispatch once the causes are removed or cease.

5.0 Assignment

This Agreement may not be assigned by Customer except to a wholly owned subsidiary or affiliate held under common control with Customer, without prior written consent of Pac-West which shall not be unreasonably withheld. Notwithstanding, the Customer may assign this Agreement to a company that acquires Customer or into which Customer is merged, subject to Pac-West's prior approval of the acquiring or surviving company's credit and increase of an existing, or imposition of a new, deposit or guarantee requirement, at Pac-West's exclusive action. Pac-West must receive a minimum of 30 days to consider such request.

6.0 Confidentiality

This Agreement and all of the non-tariffed rates, terms, conditions, and other information herein, are confidential and shall not be disclosed by either party to any other person, except as may be required by a court or government agency acting in accordance with its jurisdiction. Furthermore, Pac-West may transmit one or more copies of this Agreement to the appropriate state Public Utilities Commission or Public Services Commission for filing. Such filing shall be submitted on a confidential basis as doing so is permitted by the commission. If either party discloses such information to a person within said party's company on a need to know basis, such person will be advised of the confidential and non-disclosable nature of said information and required to abide thereby.

7.0 Tariffs and Modification by Regulatory Authorities

7.1 All rates, terms, and conditions for the provision of services offered under this Agreement are subject to Pac-West's tariff schedules, if any, and are subject to change at Pac-West's discretion, in accordance with applicable requirements, if any (except that Customer's Usage charges will not be changed by Pac-West during the term of each respective SCA, except as provided for by Section 7.3 herein), or as may be directed by governmental authorities.

7.2 Nothing herein shall be construed as superseding any present or future applicable provisions of Pac-West's tariffs with respect to the provision of tariffed services, and in the event of any inconsistency between the tariff and this Agreement, the tariff shall govern.

7.3 This Agreement shall at all times be subject to modification to incorporate any changes, revisions or modifications the Federal Communications Commission or the applicable Public Utilities Commission or other applicable regulatory body may, from time to time, direct in the exercise of its jurisdiction, or to pass on to Customer any charges or fees, either commission or other regulatory body imposes on Pac-West, or authorizes other carriers to charge Pac-West, for services being provided by Pac-West to Customer. In the event that actions of either commission result in a material modification to this Agreement at any time, any adversely affected party may terminate this Agreement, without liability, upon 30 days' notice to the other given no later than 60 days after the date such modification is required.

8.0 Entire Agreement

This Agreement sets forth the entire understanding of the parties and supersedes any and all prior Agreements, representations, or understandings related to the subject matter hereof. This Agreement may not be amended except by subsequent written amendment executed by both parties.

9.0 No Joint Undertaking

Nothing in the Agreement shall be construed as creating an association, trust, partnership, or joint venture between the parties in any respect or with regard to any undertaking.


Pac-West



Master Services Agreement

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10.3 Survival of Provisions

Any obligations of the Parties relating to monies owed, as well as those provisions relating to confidentiality, limitations on liability and indemnification, shall survive termination of this Agreement.

11.3 Unenforceability of Provisions

The illegality or unenforceability of any provision of this Agreement does not affect the legality or enforceability of any other provision or portion. If any provision or portion of this Agreement is deemed illegal or unenforceable for any reason, there shall be deemed to be made such minimum change in such provision or portion as is necessary to make it valid and enforceable as so modified.

12.3 Cumulative Rights and Remedies

Except as may otherwise be provided herein, the assertion by a Party of any right or the obtaining of any remedy hereunder shall not preclude such Party from asserting or obtaining any other right or remedy, at law or in equity, hereunder.

13.3 Notices

Any notice required or permitted to be given under this Agreement by a party shall be in writing and shall be delivered by hand, mail, national overnight courier service or by fax if confirmed by telephone to the other party at the address or phone numbers shown herein or at such other address or phone numbers as shall be designated from time to time.

14.2 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of California.

The venue for enforcement of this Agreement is San Joaquin County.

15.0 Waiver of Right to Trial by Jury

Each party waives the right to a trial by jury in any suit based on or arising out of this Agreement.

16.0 Fax Signature & Counterparts

Each party intends that a facsimile of its signature printed by a receiving fax machine may be regarded as an original signature and agrees that this Agreement can be executed in counterparts, each of which shall be an original, but all of which shall constitute a single instrument.

17.0 Fraud

PacWest shall have the right to refuse or discontinue telephone service or service arrangements without advance notice, if the acts of the Customer or the conditions upon their premises are such as to indicate intention to defraud PacWest, including but not limited to, providing false credit information, significantly misstating expected service volumes, using the services for unlawful purposes, or using services without intent to pay.

PacWest will attempt to contact the Customer by telephone prior to discontinuing their service or service arrangements. If PacWest is unable to reach the Customer by telephone, a letter will be mailed to the Customer on the same date their service or service arrangement is discontinued explaining the reasons for such action and their right to dispute such action.

If the Customer can be reached, bringing the account current and/or payment of a security deposit may rescind the discontinuance of service. These actions may, at the exclusive discretion of PacWest, result in PacWest electing to rescind the discontinuance of service.

Customer is responsible for all charges attributable to Customer, even if incurred as a result of fraudulent or unauthorized use of the Service, unless PacWest has actual knowledge of the same and fails to notify Customer thereof. PacWest may, but is not obligated to, detect or

report unauthorized or fraudulent use of Service.

PacWest's Acceptable Use Policy is a detailed description of the actions prohibited by PacWest to users of its network. PacWest reserves the right to amend, revised or modify this Policy at any time in its sole discretion in any manner, effective upon posting of the modified Policy to its website. The most current version of this Policy document can be found at www.pacwest.com/termsaup.htm

18.0 Method of Service

18.1 PacWest reserves the right to redefine its regions, add new regions, or remove regions from its current offering, as it deems appropriate in its sole discretion. PacWest will provide Customer with at least 30 days' notice of any change in the definition of PacWest's regions.

18.2 In the event PacWest plans to exit a current market or region, Customer shall be provided with 30 days prior written notification of PacWest's intent. Customer shall be allowed to immediately terminate services in the affected region without penalty.

18.3 PacWest reserves right to have trunks cut off automatically after seventy-two (72) hours of consecutive use for security reasons. Customer may want to advise its end users that they cannot be online for longer than seventy-two (72) consecutive hours.

18.4 Customer agrees that it shall not cause itself or any other carrier to route, or request or permit the routing of, any toll free calls to ports or DID numbers provided by PacWest, without the prior written consent of PacWest. PacWest prohibits the routing of toll free calls to ports or DID numbers provided by PacWest, unless Customer has notified PacWest in writing of the method in which calls will be routed and PacWest has approved such routing of toll free traffic. Routing of toll free traffic to any ports or DID numbers provided by PacWest without complying with the foregoing requirements may result in the immediate termination of Service by PacWest in its exclusive discretion without prior notice to Customer.

19.0 Interconnection with other Carriers

This Agreement is specifically conditioned on PacWest's continuing ability to maintain suitable arrangements with other local exchange carriers for the termination or origination (as applicable to the particular service provided to Customer) of calls to or from the access numbers furnished to Customer under this Agreement. In the event that PacWest is unable to maintain arrangements with one or more other local exchange carriers under terms or conditions, including but not limited to provisions for mutual compensation of interchanged calls, that PacWest, in its sole discretion, determines are fair and adequate, PacWest may elect to not provide, or may not be able to provide, service to or from certain carriers, and if the traffic so affected is more than 25% of the total traffic (including traffic to or from Internet Service Providers, Paging Companies and Enhanced Service Providers for which the end user "dials" a PacWest access number) PacWest previously carried in that Region, then PacWest may upon 30 days' notice to Customer, (or shorter notice if required under the circumstances) terminate this Agreement, either in total or as it applies to said Region, at PacWest's sole discretion, without incurring any liability. In the event that PacWest is unable to maintain arrangements with one or more other local exchange carriers for the contemplated transport of calls to or from the access numbers furnished for a particular Region, and the traffic affected is at least 25% of the total traffic to or from Customer originated from or terminated to that Region, Customer may terminate this Agreement, without liability, upon 30 days' notice to PacWest given no later than 60 days after being so notified by PacWest of its inability to transport calls to the access numbers furnished Customer. In the event that PacWest is unable to maintain arrangements with one or more other local exchange carriers for the transport of calls to the access numbers furnished for a particular Region, and the traffic affected is less than 25% of the total traffic to Customer originated within that Region,



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Customer may terminate the quantity of DS-0s used to deliver traffic to Customer for that area, without liability, upon 30 days' notice to PacWest given no later than 60 days after being so notified by PacWest of its inability to transport calls to the access numbers furnished Customer.

20.6 Term and Termination

20.1 Sub-section 20.2 does not apply to Managed Dial Access (Hourly) Service.

20.2 The term of this Agreement shall commence on the Effective Date, and shall terminate three (3) years thereafter, in the event the period of time for a particular Service or Services to be provided by PacWest to Customer pursuant to the ordering provisions set forth in the applicable SOA, as attached hereto and made a part hereof, extends beyond the effective date of termination, such Services shall remain in effect for the agreed upon term, subject to all of the terms and conditions of this Agreement as if it were still in effect with respect to such Services. Termination of this Agreement shall not release Customer from term commitments established by each executed and applicable SOA or for any amounts owed to PacWest under this Agreement. All Services in place upon execution of this Agreement will remain at their existing pricing until execution of a new SOA documenting Customer's approval of new pricing and desired term. All Services ordered under this Agreement shall renew on a month-to-month basis once such Services have been installed for the full term, as designated on the SOA, unless Customer renews the service term. Services renewing on a month-to-month basis shall be billed at then-current month-to-month rates upon expiration of term.

20.3 This Agreement shall automatically renew in successive one-year periods unless terminated by written notice by either party at least thirty (30) days prior to the end of the term or any renewal term.

20.4 Either party shall have the right to terminate this Agreement and the commitment to all Services ordered under this Agreement on the occurrence of a material breach by the other party, provided that as to all breaches other than failure of the Customer to make payments as required hereby, written notice of the breach has been given to the other party and the other party has not cured the breach within 30 days after such written notice has been given. Failure of the Customer to make payments required hereby within the time specified in this Agreement is a material breach and a seven (7) day notice shall be required in order to terminate this Agreement and all service hereunder for non payment. Subject to the provisions of Section 3.8 in the General Terms, which shall survive the termination of this Agreement, termination of this Agreement shall not preclude the availability of other remedies expressly provided for in this Agreement or provided for at law or in equity but subject to any limitations contained in this Agreement. PacWest's obligation to provide service pursuant thereto shall also terminate upon such termination of the Agreement.

20.5 In the event Customer terminates this Agreement or any SOA(s) prior to the expiration of their respective term, or in the event of termination of this Agreement due to a material breach by Customer, Customer agrees to pay termination charges as follows: (a) for termination during months 1 through 12, 100% of the monthly service charges or minimum monthly charges multiplied by the number of months remaining in the term of the commitment; (b) for termination during months 13 through 24, 85% of the monthly service charges or minimum monthly charges multiplied by the number of months remaining in the term of the DS-0s; (c) for termination during months 25 through 36 or during any renewal term, 70% of the monthly service or minimum monthly charges multiplied by the number of months remaining in the term of the DS-0s.

In the event Customer terminates private line or x-connect services prior to the expiration of their respective term, or in the event of termination of this Agreement due to a material breach by Customer, Customer agrees to pay the following early termination penalty(s):

Private Line circuit - (not applicable to MTM private line circuits) 100% of the monthly service charges multiplied by the number of months remaining in the term of the circuit, as identified on each applicable SOA, and any term-related discount applicable to the affected circuit.

Cross-connect - (not applicable to MTM cross-connects) 70% of the monthly service charges assigned by the number of months remaining in the term of the circuit, as identified on each applicable SOA, and any term-related discount applicable to the affected cross-connect.

20.6 No refund or proration of any charges shall be made in the event that either party terminates this Agreement.

20.7 Upon termination of this Agreement, except for termination due to failure of the Customer to make payments required hereby within the time specified in this Agreement, providing PacWest has the necessary and appropriate premises, facilities and interconnection arrangements available, and provided Customer is not in breach, Customer shall have the right to retain, for a commercially reasonable time of then current month-to-month charges, existing numbers and trunks, until Customer relocates or transfers all of its subscribers who are assigned PacWest numbers to another carrier's service. PacWest acknowledges that such relocation and transfer relocating may take an extended period of time to accomplish in order to avoid prejudice to Customer's business and may also be required to take place in stages during this period. Customer shall diligently pursue all such relocation and transfer in a commercially reasonable manner, and the parties agree that such efforts will be conclusively deemed reasonable if completed within twelve (12) months from the date that termination under this Agreement is effective.

IN WITNESS WHEREOF, The Parties have caused this Agreement to be executed by their respective authorized representatives.

By Peter Austin
Name PETER AUSTIN
Title DIRECTOR
Date DECEMBER 9, 2004
Phone 718 889 1131
Fax 718 889 1201

By Eric E. Jacobs
Name Eric E. Jacobs
Title VP+GM SP Markets
Date 02-01-05
Phone 209 926-8217
Fax 209 926-4140

Customer

PacWest



PSTN On Ramp Supplemental Exhibit to the Master Services Agreement

1775 W. March Lane, Suite 250 • Stockton, CA 95207 • 1-800-399-1234 • Fax (209) 926-4140

This PSTN On Ramp Supplemental Exhibit ("Exhibit") to the Master Services Agreement ("Agreement") dated 10/10/04, and between Dollar Phone Access ("Customer") and PacWest Telecomm, Inc. ("PacWest"),

subject to all terms and conditions set forth in the body of the Agreement, this Exhibit, the Price Sheet, attached hereto, or otherwise incorporated by reference.

Deleted:

Deleted:

1.0 Service Term Definitions

PSTN- Public Switched Telephone Network

SuperPOP- PacWest's carrier class switching and collocation facility

Class- Carriers that have been grouped together under one price level based on call jurisdiction, as defined in the Price Sheet.

Calls to Customer- calls that originate on the PSTN and are terminated to the Customer's Facilities via PacWest's PSTN On Ramp Service. Normally, these are not calls for which PacWest will bill Customer, unless such calls are dialed to a "toll free" number serving Customer, its employees, or its customers.

Calls from Customer- calls that originate on the Customer's Facilities and terminate on the PSTN via PacWest's PSTN On Ramp Service. Normally, these are calls for which PacWest will bill Customer.

Off-net - calls from Customer that terminate to a carrier with whom PacWest is not directly interconnected that is outside of PacWest's footprint (AZ, CA, NV, OR, WA).

Local (ILEC) - local calls from Customer that terminate to a carrier with whom PacWest is directly connected and is within PacWest's footprint.

Local (non-ILEC) - local calls from Customer that terminate to a carrier with whom PacWest is not directly interconnected but that is within PacWest's footprint.

Intrastate (ILEC) - intra-state intrastate and interstate calls from Customer that terminate to a carrier with whom PacWest is directly connected and is within PacWest's footprint.

Interstate (ILEC) - interstate calls from Customer that terminate to a carrier with whom PacWest is directly connected and is within PacWest's footprint.

Intrastate/Interstate (non-ILEC) - intra-state intrastate, interstate and interstate calls from Customer that terminate to a carrier with whom PacWest is not directly interconnected but that is within PacWest's footprint.

International- international calls that originate on the Customer's Facilities that PacWest terminates to the appropriate international carrier.

2.0 Method of Service

2.1 PSTN On Ramp (the "Service") is a calling service, connecting calls between the Customer's Network and the PSTN via PacWest's Network and is provided

2.2 Customer may resell or otherwise include the Service it purchases under this Exhibit in the provision of service to other entities; however, Customer shall be fully responsible for all services it provides to its end users, whether or not such services include the Service as a component, in full or in part.

2.3 Calls without ANI or an invalid ANI must not exceed more than 5% of all calls in any Class by usage type. If less than 5% of all calls in each Class by usage type are sent without ANI, the calls will be considered local and billed at the applicable local rates. If more than 5% of all calls in any Class by usage type are sent without ANI, the calls will be considered intrastate and billed at the applicable intrastate non-ILEC rates.

2.4 Customer shall not cause itself or any carrier to route, transmit, or request or permit the routing or transmission of toll free (800) traffic or traffic using CIC 0099 or 0110 to or in conjunction with any DID or POTS numbers assigned by the PacWest, or use, or permit the use of, any other call routing method that would cause the originating telephone company to bill PacWest, without first obtaining explicit written permission from an officer of PacWest. Customer's causing, transmitting or routing such prohibited traffic shall permit PacWest to immediately refuse or discontinue Service or Service arrangements without advance notice, and Customer shall be liable for any such charges billed to PacWest due to such transmission or routing. In the event that Customer causes or sends calls to the PacWest switch that are not approved for termination, then Customer shall pay the applicable rates outlined in the Price Sheet.

2.5 Customer may use one trunk group ("24 DS0s") per SuperPOP, provided that in SuperPOPs with multiple switches the trunk group is less than 96 DS0s. In cases where trunk groups in SuperPOPs with multiple switches are larger than 96 DS0s, the Customer must use one trunk group per switch.

2.6 Locally dialed calls that are completed within PacWest's footprint, as determined by the locations of the rate centers associated with the ANI and terminating number, will be billed as local. Off-Net locally dialed calls, as determined by the locations of the rate centers associated with the ANI and terminating number, will be billed at the appropriate Off-Net usage rate. A locally dialed or intrastate call that is misrouted to PacWest and then rerouted over the PSTN for completion will be rated based on a comparison of the routing point at which it was delivered to PacWest and the terminating number. (As an example, if Customer sends a call to PacWest for termination and the call has a New York, NY ANI and a New York, NY terminating number, which are local to each other, PacWest would route the call via the PSTN using its long distance provider and bill the Customer at the applicable long distance rate for a call from PacWest's switch to New York, NY).

2.7 Customer acknowledges that PSTN On Ramp Service is limited to 7 and 10 digit calls. Customer agrees

08/03/04

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v.04-01



PSTN On Ramp Supplemental Exhibit to the Master Services Agreement

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that it will not route, or permit the routing by Customer, any of its employees, customers or any other persons of, three (3) digit or abbreviated dialed calls to Pac-West via interconnections with PSTN On Ramp Service, these calls will fail and receive a fast busy. Calls to pay-per-call services (800 / 878 numbers) will not be routed. Calls to 1010XXX carrier codes will not be routed. Any and all calls not approved for PSTN On Ramp Service will fail.

2.8 Customer is responsible for fraud management and prevention, and will pay Pac-West for all associated usage charges regardless of whether that usage was fraudulent including orders submitted through the Driver's Seat online interface. Customer is responsible for all fraudulent calls and prevention, as outlined in Section 17.0 of the Agreement.

2.9 Customer shall provide Pac-West with usage forecasts, on a Rate Center basis, of Customer's estimated Monthly Minutes of Use (MMU) and simultaneous circuits needed to transport such traffic. Customer will provide Pac-West with an initial forecast and quarterly forecasts thereafter. Customer shall be required to notify Pac West immediately, in writing, if Customer has a reasonable belief that a significant deviation (i.e., a deviation of more or less than fifteen percent (15%) from the forecasted MMU) from the forecast will occur. Said notification shall also include a revised forecast with specific details of the anticipated deviations.

3.0 Charges, Call Lengths, Surcharges, other Limitations

3.1 No minimum call lengths apply for any local, intrastate, interstate and international calls and all such calls are measured in conversation seconds and rounded to the nearest second. For each usage type, the total usage in each Class will be aggregated and rounded up to the nearest minute at the end of each month.

3.2 No charges apply for calls to the Customer, unless such calls are inbound toll free calls bound for a Pac-West toll free number.

3.3 Toll Free calls are billed in 6-second increments with a minimum billing of 30 seconds per call. The charge for each call is rounded up to the nearest penny.

3.4 Customer agrees that no more than 10% of all toll free usage in any billing period will be unanswered calls. If more than 10% of all toll free calls are unanswered calls in any billing period, then Customer will be charged a non-complete call surcharge of \$.04 per intrastate/interstate call and \$.25 per international call.

3.5 Pac-West shall have the right to apply a \$.03 per minute surcharge to the number of minutes by which Non-ILEC originating and terminating minutes exceeds 20% of the total monthly originating and terminating service minutes in any billing period.

3.6 All rates indicated on the PSTN On Ramp Price Sheet are exclusive of any applicable taxes, fees, and surcharges that apply to this Service.

4.0 911 Service Limitation

Customer acknowledges that PSTN On Ramp Service is not offered as a basic local exchange service, and is not offered or provided as a substitute for local exchange service. Customer acknowledges 2.7 and as a result the Service does not support 911, E911, or other emergency calling service or capability. Customer understands that 911 and E-911 calls cannot be completed by PSTN On Ramp service. Customer agrees that it will not use the Service as a component of, or otherwise in connection with, any offering or provisioning of any service, including, without limitation, voice-over-internet-protocol ("VoIP") service, that is offered, provided, or held out, whether for compensation or not, as a partial or complete substitute or alternative to any local exchange service that an end user ordinarily would expect could be used to make 911 or E-911 calls. Customer agrees that it will not route, or permit the routing by Customer, any of its employees, customers or any other persons of, 911 or E911 calls to Pac-West via interconnections with PSTN On Ramp Service. Customer agrees that it will meet any requirements for 911 or E-911 service or capabilities through other services furnished by Pac-West or another telecommunication service provider that are specifically designed for or otherwise capable of providing 911 or E-911 service or capabilities. Customer agrees that it will be solely responsible for ensuring that its employees, customers, and any other persons who may originate or attempt to originate calls for completion via PSTN On Ramp Service are properly made aware of any limitations that may exist on their ability to complete 911, E911, and other emergency calls. Customer agrees that it shall be solely liable for and shall indemnify Pac-West, in full accordance with section 3 of the Agreement, from and against any and all lawsuits, claims, demands, penalties, losses, fines, liability, damages and expenses arising out of or in any way relating to such inability to complete 911, E911, and other emergency calls, including, without limitation, any actual failure of any such call to be completed.

IN WITNESS WHEREOF, The Parties have caused this Exhibit to be executed by their respective authorized representatives.

Customer

By

Name

Title

Date

Pac-West Telecomm, Inc.

By

Name

Title

Date

Customer

09/03/04

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Eric E. Jacobs
VP of Sales & Marketing
02-2305

PacWest
v.04-01

Pac-West Telecomm, Inc.

Addendum to the Master Services Agreement

This Addendum to the Master Services Agreement ("Agreement") is made and entered into this 14 day of January, 2005 by and between Pac-West Telecomm, Inc., hereinafter referred to as ("Pac-West") and Dollar Phone Access, hereinafter referred to as ("Customer").

Whereas, Pac-West and Customer desire to modify the Agreement in accordance with this Addendum.

Now, Therefore, in consideration of the mutual promises and covenants contained herein and in the Agreement, the parties agree as follows:

1. Pac-West shall offer Customer the following promotional pricing and terms for PSTN On Ramp Service:

- Services are provided on a month-to-month term.
- All Monthly Recurring Charges ("MRC's") are waived for inbound/outbound PRI's.
- All Non-recurring Installation Charges ("NRC's") for PRI's are waived.
- Customer must purchase local numbers in the rate centers Customer desires to serve.
- Customer must average a minimum monthly commitment of 2,800,000 local terminating minutes in California across 28 PRI's originating from the local access numbers provided to Customer by Pac-West.
- Usage will be evaluated by Pac-West on a monthly basis and Customer is required to maintain a minimum average of 2,800,000 California local terminating minutes per month across 28 PRI's for any such month. In the event Customer is not terminating at least 2,800,000 CA local minutes across 28 PRI's per month, then Pac-West shall invoice Customer for the difference between Customer's actual monthly usage and Customer's minimum commitment of 2,800,000 local minutes per month. Pac-West agrees to offer Customer a 30-day ramp period to obtain 2,800,000 local minutes per month prior to the minimum commitment taking effect.
- Pac-West shall charge Customer \$0.00 per call and \$0.003 per minute for all local calls terminating to SBC, Verizon, Citizens, and SureWest in California (Local ILEC).
- All other service elements, if applicable, are charged at the pricing indicated in the PSTN On Ramp Price Sheet.

2. Pac-West shall charge Customer a MRC of \$130.00 per PRI for transport from Oakland to LA and \$75.00 per PRI for transport from Stockton to LA, as applicable.

3. Customer may purchase additional Inbound PRI's in California at a MRC of \$250.00 per PRI. All NRC's are waived.

4. Pac-West shall charge Customer a one-time NRC of \$100.00 to LNP approximately 1,600 DID on one order. This charge is only valid if Customer ports all DID's on one order, otherwise additional charges may apply.

5. Customer has the option to purchase PRI's in Seattle at a MRC of \$335.00 per PRI and all NRC's are waived. Transport from Seattle to LA is offered at a MRC of \$290.00 per PRI and all NRC's are waived.

6. All charges outlined in this addendum are exclusive of any applicable taxes and surcharges.

(Initials) AK (Customer)

SP (Pac-West)

7. All of the other terms and conditions of the Agreement are hereby incorporated by reference and shall remain in full force and effect. If the terms of this Addendum conflict with the terms of the Agreement or any applicable Price Sheet, the terms of this Addendum shall control.

Formatted: Bullets and Numbering

IN WITNESS WHEREOF, the Parties have caused this Addendum to be executed by their duly authorized representatives on the date first indicated below.

Customer Dolan Phone Access
By: Peter Austin
Name: Peter Austin
Title: Director
Date: _____

Pac-West Telecomm, Inc.
By: Eric E. Jacobs
Name: Eric E. Jacobs
Title: VP + GM SP Markets
Date: 02-01-05

(Initials) PA (Customer)

EJ (Pac-West)

Pac-West Telecomm, Inc.

Amendment #2 to the Master Services Agreement

This Amendment #2 to the Master Services Agreement dated December 09, 2004 ("Agreement") is made and entered into this 8 day of August, 2005 by and between Pac-West Telecomm, Inc., hereinafter referred to as ("Pac-West") and Dollar Phone Access, hereinafter referred to as ("Customer").

Whereas, Pac-West and Customer desire to modify the Agreement in accordance with this Amendment.

Now, Therefore, in consideration of the mutual promises and covenants contained herein and in the Agreement, the parties agree as follows:

1. The Parties agree that effective as of 12/09/04, Section 18.4 of the Agreement shall be deleted in its entirety and replaced with the following new section:

"Customer agrees that it shall not cause itself or allow any other carrier to route, or request or permit the routing of any toll free (8XX) calls or traffic using CIC 0099 or 0110 to or in conjunction with any ports, DID, or POTS numbers assigned by Pac-West, or use or permit the use of any other call routing method that would cause the originating carrier to bill Pac-West, without the prior written consent from an officer of Pac-West. In the event that Customer causes or sends calls to the Pac-West switch that are not approved for termination, then Customer shall be liable for any such charges billed to Pac-West by an originating or transiting carrier as a result of such transmission or routing at the applicable rates as outlined in the Price Sheet or toll free tariff. Customer's causing, transmitting, or routing of toll free traffic to any ports, DID, or POTS numbers provided by Pac-West without complying with the foregoing requirements may result in the immediate termination of Service by Pac-West in its exclusive discretion without prior notice to Customer."

2. All of the other terms and conditions of the Agreement are hereby incorporated by reference and shall remain in full force and effect. If the terms of this Amendment conflict with the terms of the Agreement, the terms of this Amendment shall control.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their duly authorized representatives on the date first indicated below.

Customer Dollar Phone Access

By: [Signature]

Name: Moses Greenfield

Title: CEO

Date: 8/9/05

(Initials) [Signature] (Customer)

Pac-West Telecomm, Inc.

By: [Signature]

Name: Eric Jacobs

Title: VP & GM, Service Provider

Date: August 9, 2005

[Signature] (Pac-West)

Pac-West Telecomm, Inc.

Amendment #3 to the Master Services Agreement

This Amendment #3 to the Master Services Agreement dated December 09, 2004 ("Agreement") is made and entered into this

by and between Pac-West Telecomm, Inc., hereinafter referred to as ("Pac-West") and 8th day of Sept., 2005
Dollar Phone Corp., hereinafter referred to as ("Customer").

Whereas, Pac-West and Customer desire to modify the Agreement in accordance with this Amendment.

Now, Therefore, in consideration of the mutual promises and covenants contained herein and in the Agreement, the parties agree as follows:

1. Pac-West shall charge Customer a Monthly Recurring Charge ("MRC") of \$5,750.00 per month for one (1) DS-3 ordered in Tukwila on a twelve (12) month term.
2. Customer commits to a Minimum Monthly Take-Or-Pay Commitment of 500,000 local terminating Minutes of Use ("MOU") across an initial order of one (1) DS-3 in Tukwila.
3. Pac-West shall provide Customer with a 30-day ramp period to reach 500,000 MOU per month. Upon expiration of the 30-day ramp period, Pac-West shall charge Customer for the minimum take-or-pay commitment of 500,000 MOU per month, based on a local Class 2 rate of \$.0035 per minute.
4. Customer is responsible for any applicable backhaul charges for Las Vegas at a MRC of \$215.00 per backhauled PRI.
5. All of the other terms and conditions of the Agreement are hereby incorporated by reference and shall remain in full force and effect. If the terms of this Amendment conflict with the terms of the Agreement, the terms of this Amendment shall control.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their duly authorized representatives on the date first indicated below.

Customer

By: Peter Austin
Name: Peter Austin
Title: Sr. V.P.
Date: 9/8/05

Pac-West Telecomm, Inc.

By: Kim Y. Reno
Name: Kim Y. Reno
Title: Director, Customer Relations & Sales Ops
Date: 09/07/05

(Initials)

PA

(Customer)

KYR (Pac-West)

Pac-West Telecomm, Inc.

Amendment #4 to the Master Services Agreement

This Amendment #4 to the Master Services Agreement dated December 09, 2004 ("Agreement") 15th day of November, 2005 is made and entered into this by and between Pac-West Telecomm, Inc., hereinafter referred to as ("Pac-West") and Dollar Phone Corp., hereinafter referred to as ("Customer").

Whereas, Pac-West and Customer desire to modify the Agreement in accordance with this Amendment.

Now, Therefore, in consideration of the mutual promises and covenants contained herein and in the Agreement, the parties agree as follows:

1. The parties agree that Customer is converting from PSTN On Ramp Service over to IFEX Service on a month-to-month term.
2. Customer's PSTN On Ramp DS-3's located in Los Angeles and Tukwila will be converted to origination-only service. Pac-West shall continue to invoice Customer a MRC of \$3,500 for the Los Angeles DS-3 and \$5,750 for the Tukwila DS-3.
3. Pac-West shall provide Customer with an IFEX DS-3 in Los Angeles and waive the DS-3 port charge.
4. Pac-West shall charge Customer an IFEX subscription charge of \$1.00 per month.
5. Pac-West shall charge Customer a rate of \$0.003 for all Local Class-2 IFEX traffic in CA and a rate of \$0.0035 for all Local Class-2 IFEX traffic in NV, WA, OR, and AZ.
6. Customer agrees to a Monthly Minimum Take-or-Pay Commitment of 2,800,000 MOU (\$8,400) in CA and a Monthly Minimum Take-or-Pay Commitment of 500,000 MOU (\$1,750) in NV, WA, OR, and AZ.
7. All of the other terms and conditions of the Agreement are hereby incorporated by reference and shall remain in full force and effect. If the terms of this Amendment conflict with the terms of the Agreement, the terms of this Amendment shall control.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their duly authorized representatives on the date first indicated below.

Customer

By: Dollar Phone Corp.
Name: [Signature]
Title: Sr. VP.
Date: 11/15/05

(Initials)

[Signature] (Customer)

Pac-West Telecomm, Inc.

By: [Signature]
Name: Km. y. Rezo
Title: Director, Customer Relations & Sales ops
Date: 11/21/05

[Signature] (Pac-West)



IFEX Supplemental Exhibit to the Master Services Agreement

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This IFEX Supplemental Exhibit ("Exhibit") is an attachment to the Master Services Agreement ("Agreement") dated by and between ("Customer") and Pac-West Telecomm, Inc. ("Pac-West").

1.0 Service Term Definitions

Capitalized terms not defined herein are as defined in the Agreement or in other documents incorporated herein by reference.

Calls to Customer - Calls that originate on the PSTN and are terminated to the Customer's Facilities via Pac-West's IFEX Service.

Calls from Customer - Calls that originate on the Customer's Facilities and terminate on the PSTN via Pac-West's IFEX Service.

CPN - Calling Party Number

Footprint - Pac-West's Footprint is Arizona, California, Nevada, Oregon, and Washington (AZ, CA, NV, OR, WA)

Intelligent Foreign Exchange ("IFEX") - is a Calling Service that provides customers with Subscription Numbers in multiple exchanges.

Off-Net Calls - Calls from Customer that terminate to a carrier with whom Pac-West is not directly interconnected and that is outside of Pac-West's Footprint.

PSTN "Public Switched Telephone Network" - any common carrier network that provides circuit switched routing of telecommunications services between public users.

Subscription Number - a dialable number assigned to an IFEX Customer.

SuperPOP - Pac-West's carrier class switching and collocation facility.

2.0 Conditions of Service

2.1 IFEX Service ("the Service") is a foreign exchange voice service that allows a Customer to establish multiple foreign exchanges from a single location. IFEX Service is provided subject to the terms and conditions set forth in the Agreement, this Exhibit, any applicable tariffs, the Price Sheet, or other documents incorporated by reference by this Exhibit or the Agreement (collectively the "Agreement").

2.2 Customer may resell the Service it purchases under this Exhibit or combine the Service it purchases under this Exhibit with other services it provides to third parties. Resale of all or any part of the Service to third parties does not limit or reduce Customer's duty to fully perform its obligations as set forth in the Agreement. Customer shall remain responsible for compliance with all terms and conditions of the Agreement. It is Customer's obligation to inform Pac-West that Customer is reselling the Service and to obtain all regulatory and other authorizations required to resell the Services and to comply with all legal and regulatory requirements imposed on resellers by state and federal governmental entities. Unless Customer provides Pac-West with all documentation necessary to demonstrate

its status as a reseller, including but not limited to reseller tax certificates, Pac-West will assume that Customer is not reselling the Service or any portion thereof.

2.3 Customer shall not use the Service as a substitute for basic dial-tone telecommunications services. Service may only be used by Customer in conjunction with certain Pac-West approved platforms. Customer may not use the Service to provide any IP-Enabled services, including but not limited to Voice over IP traffic or related services where regulations require access to 911 emergencies services.

2.4 Calls to pay-per-call services (900 / 976 numbers) and 1010XXX carrier codes will be blocked. Any and all calls not approved for IFEX Service will fail.

2.5 The Service cannot be used to complete Operator assisted calls.

2.6 IFEX is limited to routing and completing calls to North American Numbering Plan (NPA-NXX-XXXX) Subscription Numbers only. All calls to three (3) digit or abbreviated numbers, including but not limited to "911" will be blocked and will not be completed.

2.7 On the Effective Date of the Agreement, Customer shall provide Pac-West with an initial 12-month forecast, by Rate Center and Pac-West SuperPOP, of Customer's estimated Monthly Minutes of Use ("MOU") and simultaneous circuits needed to transport the estimated MOUs. Customer will provide Pac-West with subsequent 12-month and quarterly forecasts, due on the fifteenth day of each calendar quarter, thereafter. Customer shall be required to notify Pac West immediately, in writing, if Customer reasonably believes that the actual MOUs in a given quarter will deviate from the quarterly forecast more or less than fifteen percent (15%). This notification shall also include a revised forecast.

3.0 CHARGES

3.1 IFEX Service charges consist of three price elements: (i) IFEX port charge on a MRC basis (this port charge consists of a T-1, multiple T-1's, or a DS-3 and the associated backhaul and cross-connect charges), (ii) a monthly subscription charge for IFEX Service, inclusive of the virtual circuits and Subscription Numbers needed to provide foreign exchange services, and (iii) usage charges based on MOU.

3.2 Charges are based on MOU commitments and Customer is responsible for any underutilization charges, as set forth in the IFEX Price Sheet, if Customer fails to satisfy the MOU commitments in time period specified on the Price Sheet.

3.3 (i) No minimum call lengths apply to any United States domestic calls and all such calls are measured in conversation seconds. At the end of each billing period, Customer's total conversation seconds for the United States domestic usage will be aggregated by billing jurisdiction and rounded up to the nearest minute and the total charge for domestic usage will be determined using the aggregate minutes; (ii) International calls are billed in 6-second increments with a minimum billing of 30 seconds per

Customer

Kay
Pac-West



IFEX Supplemental Exhibit to the Master Services Agreement

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call. The charge for each international call is rounded up to the nearest penny.

3.4 PacWest bills for all calls based on the originating and terminating Subscription Numbers and the OCN of the carrier that terminates the call.

3.5 All charges are exclusive of any applicable taxes, fees, and surcharges.

3.6 The rates and charges set forth in this Agreement are the total amounts payable by Customer hereunder.

4.0 Basic 911 and E911 Service Limitation

The Service cannot complete calls to Basic 911, E911, or other emergency calling services. Customer agrees that it shall be solely liable for and shall indemnify PacWest from and against any and all lawsuits, claims, demands, penalties, losses, fines, liability, damages and expenses arising out of or in any way relating to such inability to complete Basic 911, E911, and other emergency calls, including, without limitation, any actual failure of any such call to be completed.

THIS SECTION MUST BE COMPLETED FOR
AGREEMENT TO BE VALID.

The approved PacWest Platform for this contract is:

☐ Calling Card Platform

Parties to Initial _____

IN WITNESS WHEREOF, The Parties have caused this Exhibit to be executed by their respective authorized representatives.

Customer
By [Signature]
Name John A. Smith
Title Gen. Mgr.
Date 11/21/05

PacWest Telecom, Inc.
By [Signature]
Name Kathy Kato
Title Director Customer Relations & Sales Ops
Date 11/21/05

[Signature]
Customer

Pac-West Telecomm, Inc.

Amendment #5 to the Master Services Agreement

This Amendment #5 to the Master Services Agreement dated December 09, 2004 ("Agreement") 16 day of March, 2006 is made and entered into this by and between Pac-West Telecomm, Inc., hereinafter referred to as ("Pac-West") and Dollar Phone Corp., hereinafter referred to as ("Customer").

Whereas, Pac-West and Customer desire to modify the Agreement in accordance with this Amendment.

Now, Therefore, in consideration of the mutual promises and covenants contained herein and in the Agreement, the parties agree as follows:

1. Pac-West agrees to offer Customer a usage rate of \$0.0015 for all Local Class-2 usage in California, effective as of March 16, 2006.
2. All usage rates are subject to change upon thirty (30) days prior written notice to Customer.
3. All of the other terms and conditions of the Agreement are hereby incorporated by reference and shall remain in full force and effect. If the terms of this Amendment conflict with the terms of the Agreement, the terms of this Amendment shall control.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their duly authorized representatives on the date first indicated below.

Customer Dollar Phone
By: Peter Austin
Name: Peter Austin
Title: Sr. V.P.
Date: 3/18/06

Pac-West Telecomm, Inc.

By: Kim Y. Rego
Name: Kim Y. Rego
Title: Director, Customer Relations & Sales Operations
Date: 04/14/06

(Initials)

PA (Customer)

KYR (Pac-West)

Pac-West Telecomm, Inc.**Amendment #6 to the Master Services Agreement**

| | | | | |
|--|--|--------|------|--------|
| This Amendment #6 to the Master Services Agreement dated December 09, 2004 ("Agreement") is made and entered into this | 24 | day of | July | , 2006 |
| by and between Pac-West Telecomm, Inc., hereinafter referred to as ("Pac-West") and | Dollar Phone Corp., hereinafter referred to as ("Customer"). | | | |

Whereas, Pac-West and Customer desire to modify the Agreement in accordance with this Amendment.

Now, Therefore, in consideration of the mutual promises and covenants contained herein and in the Agreement, the parties agree as follows:

1. Subject to the terms and conditions outlined herein, Pac-West agrees to provide Customer with a blended rate of \$0.012 per minute for all usage in Local Classes 4 - 10 for IFEX service only.
2. The blended rate outlined above will be effective as of the August 15, 2006 invoice period, so long as this Amendment #6 is signed by Customer and returned to Pac-West no later than August 1, 2006.
3. Customer agrees to maintain a distribution of calls in Local Classes 4 - 10 that is substantially similar to the distribution of such calls on Customer's June 15, 2006 invoice. Pac-West will monitor Customer's distribution of calls in Local Classes 4 - 10 and Pac-West reserves the right, in its sole discretion, to revise the \$0.012 blended rate upon five (5) days advance notice to Customer in the event distribution changes significantly.
4. Customer agrees that all outstanding billing disputes have been resolved and all outstanding balances must be paid in full within three (3) business days from execution of this Amendment #6.
5. All of the other terms and conditions of the Agreement are hereby incorporated by reference and shall remain in full force and effect. If the terms of this Amendment conflict with the terms of the Agreement, the terms of this Amendment shall control.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their duly authorized representatives on the date first indicated below.

Customer

By:

Name:

Title:

Date:

(Initials)

(Customer)

Pac-West Telecomm, Inc.

By:

Name:

Title:

Date:

(Pac-West)

Pac-West Telecomm, Inc.

Amendment #7 to the Master Services Agreement


| | | | | |
|--|--|--------|-----|--------|
| This Amendment #7 to the Master Services Agreement dated December 08, 2004 ("Agreement") is made and entered into this | 8th | day of | May | , 2007 |
| by and between Pac-West Telecomm, Inc., hereinafter referred to as ("Pac-West") and | Dollar Phone Corp., hereinafter referred to as ("Customer"). | | | |

Whereas, Pac-West and Customer desire to modify the Agreement in accordance with this Amendment.

Now, Therefore, in consideration of the mutual promises and covenants contained herein and in the Agreement, the parties agree as follows:

1. Customer agrees to utilize its existing PSTN On Ramp two-way west coast DS-3 to begin sending terminating traffic to the west coast.
2. Pac-West agrees to charge Customer a rate of \$0.0050 per minute for IntraState and InterState termination to OCN 9740 in California LATAs 722 through 740 (IntraState and InterState Rate Class-3).
3. Upon execution of this Amendment, Customer agrees to extend the term of its existing PSTN On Ramp DS-3 for a term of one (1) year from the turn-up of service.
4. In the event Customer requires additional capacity, then any such additional capacity shall be purchased at the rates previously agreed upon in the Agreement and subsequent contract amendments entered into between Pac-West and Customer.
5. Pac-West agrees to invoice Customer on a monthly basis, as outlined in the Agreement.
6. All other standard rates and usage charges apply, as outlined in the PSTN On Ramp Price Sheet and Termination Rate Schedule.
7. All of the other terms and conditions of the Agreement are hereby incorporated by reference and shall remain in full force and effect. If the terms of this Amendment conflict with the terms of the Agreement, the terms of this Amendment shall control.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their duly authorized representatives on the date first indicated below.

Customer
By: 
Name: Peter Austin
Title: S.R. V.P.
Date: May 8, 2007
(Initials) PA (Customer)

Pac-West Telecomm, Inc.
By: 
Name: VP Sales
Title: Eric S. Travis
Date: 5-18-2007
 (Pac-West)

Declaration of Shawn O'Donnell
WC Docket No. 07-156
August 13, 2007

EXHIBIT 2

July 24, 2007 Customer Notice Letters

**NOTICE UNDER MASTER SERVICES AGREEMENT
OF EXIT FROM CERTAIN REGIONS**

July 24, 2007

To: ALL SERVICE PROVIDER CUSTOMERS

Re: 30-Day Notice under Section 18.1 and 18.2 of Master Services Agreement

Elimination of 25-State Region from Pac-West Service Footprint

Dear Pac-West Customer:

Pac-West Telecomm, Inc. and Pac-West Telecomm of Virginia, Inc. ("Pac-West") ARE EXERCISING THEIR CONTRACTUAL RIGHT TO EXIT THE REGIONS IN THE FOLLOWING 25 STATES (the "Exited Markets"):

| Pac-West Exited Markets | | | | |
|-------------------------|----------|----------------|--------------|----------------|
| Alabama | Illinois | Michigan | New Jersey | South Carolina |
| Delaware | Indiana | Minnesota | New York | Tennessee |
| District of Columbia | Kansas | Mississippi | Ohio | Texas |
| Florida | Kentucky | Missouri | Pennsylvania | Virginia |
| Georgia | Maryland | North Carolina | Rhode Island | Wisconsin |

This notice applies to ALL SERVICES in the Exited Markets.

This notice is given pursuant to the Master Services Agreement ("MSA") between you and Pac-West. You are required pursuant to this notice to cease using any services from Pac-West in the markets within thirty (30) days of the date of this notice. No orders will be accepted and no services will be activated in the Exited Markets as of the date of this notice. Local and intrastate termination will not be available in the Exited Markets thirty (30) days after the date of this notice. Pursuant to the MSA, you are permitted to immediately terminate services in the affected region without penalty. Please be aware that you remain responsible for payment in full for all services provided to you until the date of discontinuation.

In order to avoid any disruption of service to you or to any end users you serve using Pac-West services, you should immediately make alternative arrangements for your services in the Exited Markets and convert to an alternate provider as quickly as possible.

Reference is also made to Pac-West's notice to service provider customers taking Pac-West services in the Exited Markets of our application to the Bankruptcy Court seeking authority to terminate all services in the Exited Markets within thirty (30) days. In that notice, Pac-West strongly urges its service provider customers to make alternative arrangements and to have completed their migration to other providers within thirty (30) days. Pac-West reserves the right to withdraw these notices if the Bankruptcy Court declines to grant the requested authority.

To assist you in this process, Pac-West will provide blanket authority to the Number Portability Administration Center to port all telephone numbers assigned to you in the Exited Markets. We urge you to make arrangements for your new carrier to port the numbers on a mass or automated basis to expedite the migration. We can provide you, on request, with a list of the telephone numbers that our records show are assigned to you by Pac-West or ported by your customers to Pac-West. We also remind you that, if they are not already in place, you must establish any required network connections between your network and the network of the new carrier prior to porting telephone numbers to ensure call completion.

Pac-West appreciates the opportunity it has had to serve you. We will try our best to make the transition of your Service(s) in the Exited Markets as smooth as possible. If you have any questions regarding the discontinuance of our Services or the refund of any unused Services or deposits, please contact us at **1-877-626-4325**.

Sincerely yours,

Pac-West Customer Service

NOTICE OF SERVICE DISCONTINUANCE
YOU MUST TAKE IMMEDIATE ACTION
TO PREVENT DISRUPTION OF YOUR SERVICE
AND SERVICE TO YOUR END USERS
DO NOT DISREGARD THIS NOTICE

July 24, 2007

Re: Termination of All Services in Certain States and the District of Columbia

Dear Pac-West Customer:

As part of its reorganization under Chapter 11 of the Bankruptcy Code, Pac-West Telecomm, Inc. and Pac-West Telecomm of Virginia, Inc. ("Pac-West") WILL BE SEEKING BANKRUPTCY COURT AUTHORIZATION TO DISCONTINUE ALL SERVICE IN THE FOLLOWING LOCATIONS ("Exited Markets"):

| Pac-West Exited Markets | | | | |
|-------------------------|----------|----------------|--------------|----------------|
| Alabama | Illinois | Michigan | New Jersey | South Carolina |
| Delaware | Indiana | Minnesota | New York | Tennessee |
| District of Columbia | Kansas | Mississippi | Ohio | Texas |
| Florida | Kentucky | Missouri | Pennsylvania | Virginia |
| Georgia | Maryland | North Carolina | Rhode Island | Wisconsin |

The discontinuance of services in these locations will affect ALL of the services that Pac-West provides to Service Provider Customers such as VoIP Providers, Enhanced Service Providers, Internet Service Providers ("ISPs") and Telecommunications Providers that purchase services from Pac-West and incorporate those services in products that they provide to their customers. Such Pac-West services include, without limitation: public switched telephone network ("PSTN") origination and termination services, direct inward dial numbers, managed modem, collocation services, foreign exchange, private line, telephone numbers and transport services (together and separately, the "Services").

Pac-West reserves the right to withdraw this notice if the Bankruptcy Court declines to grant the requested authority.

After a careful review of its options, Pac-West has concluded (i) that discontinuing Services in the Exited Markets is essential to its being able to reorganize under Chapter 11, and Pac-West is therefore applying to the Bankruptcy Court for approval to reject certain contracts for Services and network elements in the Exited Markets, and (ii) that the continued availability of financing for its operations in the Exited Markets is not assured, which jeopardizes Pac-West's ability to continue to provide Services in the Exited Markets during the Chapter 11 proceedings.

Pac-West anticipates that it will be able to continue providing the Services in the Exited Markets for 30 days after the date of this notice. However, there is no assurance that Pac-West will have continued financing for operations in the Exited Markets even for this period. You should therefore immediately make alternative arrangements for your Services in the Exited Markets and convert to an alternate provider as quickly as possible.

YOUR IMMEDIATE ACTION IS REQUIRED! YOU MUST IMMEDIATELY SELECT A NEW TELECOMMUNICATIONS PROVIDER(S) TO REPLACE ALL SERVICES THAT YOU CURRENTLY OBTAIN FROM PAC-WEST.

BECAUSE PAC-WEST CANNOT GUARANTEE THAT THE NETWORK SERVING THE EXITED MARKETS WILL REMAIN OPERATIONAL FOR ANY PREDICTABLE PERIOD OF TIME, YOU AND ANY END USERS TO WHOM YOU PROVIDE SERVICE USING ANY PAC-WEST SERVICES MAY LOSE SERVICE IN THE EXITED MARKETS IMMEDIATELY AND WITHOUT FURTHER NOTICE.

Pac-West has very limited information about the end-users of its Service Provider Customers. To the extent that discontinuance of Pac-West service could affect the primary telephone service of any of your end users, you should consider whether to provide notice to your end users that their services may be interrupted for some period of time while you transition Services to a new carrier, and whether to give priority to the migration to other providers of those end-users and any users such as hospitals or law enforcement agencies that provide important public services.

PLEASE DO NOT DELAY in arranging for a new telecommunications carrier for all of the Services you currently obtain from Pac-West. You must take immediate action to identify a new carrier, authorize that new carrier to port all of your assigned telephone numbers from Pac-West to its service, and expedite any orders for physical facilities necessary to connect your network to the new carrier.

- If you currently have blocks of telephone numbers assigned by Pac-West, we urge that you make arrangements for your new carrier to port those numbers on a mass basis to expedite the process. Pac-West will cooperate in this by agreeing to let your new carrier port the numbers to its network as quickly as possible, subject only to any minimum waiting period required by applicable law and providing you, upon request, with lists of the telephone numbers assigned to you by Pac-West or ported by your customers to Pac-West.
- If not already in place, you must also establish any required network connections between your network and the network of the new carrier prior to porting local telephone numbers to ensure that the calls will be completed.

Pac-West is also informing the Federal Communications Commission ("FCC") and state public utility commissions of this development. The FCC permits customers to object to discontinuance of their service by a telecommunications provider. As provided in the FCC's rule 47

CFR 63.71:

The FCC will normally authorize this proposed discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of the proposed discontinuance. Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, D.C. 20554, and include in your comments a reference to the Section 63.71 Application of Pac-West Telecomm, Inc. Comments should include specific information about the impact of this proposed discontinuance upon you or your company, including any inability to acquire reasonable substitute service.

This action affects Services only in the Exited Markets. Pac-West's services in other states are not affected by this notice.

Pac-West appreciates the opportunity it has had to serve you. We will try our best to make the transition of your Service(s) as smooth as possible. If you have any questions regarding the discontinuance of our Services or the refund of any unused Services or deposits, please contact us at **1-877-626-4325**.

Sincerely yours,

Pac-West Customer Service

Declaration of Shawn O'Donnell
WC Docket No. 07-156
August 13, 2007

EXHIBIT 3

Cost Information

From: Shawn O'Donnell [mailto:shawno@cxollc.com]

Sent: Friday, August 10, 2007 12:21 PM

To: 'Asher Gluck'

Cc: 'Peretz Bronstein'; 'Eitan Kimelman'; 'Dori, Yaron'; 'ECDolan@HHLAW.com'; 'Michael S Terrien'; 'Michael Hawn'; 'Wally Griffin'

Subject: RE: Pacwest

Asher,

We have finalized the costs for PacWest to keep up the states you identified. The table below shows the cost per state, which is in addition to the SS7/Collocation/Power. That \$122K per month for SS7/Collocation/Power is required no matter if you keep one state or LATA in service, or if you do all the below states. It is the common costs to keep our switch, SS7 links, etc in service.

We would need to have this money wired to our accounts prior to COB Monday, 8/13/07 in order to delay our shutdown.

The following are the circuit (access and transport costs) to support Dollar Phone:

| State | Type | Total |
|------------------|------|-----------|
| DC | | \$4,826 |
| DE | | \$5,252 |
| FL | | \$43,395 |
| GA | | \$22,762 |
| IL | | \$41,634 |
| MD | | \$6,625 |
| MI | | \$29,591 |
| MN | | \$10,368 |
| NJ | | \$10,341 |
| OH | | \$78,945 |
| PA | | \$12,010 |
| TX | | \$74,262 |
| VA | | \$17,762 |
| Collocation (XC) | | \$22,372 |
| SS7 Circuits | | \$2,264 |
| Grand Total | | \$382,407 |

In addition, the following costs would apply:

SS7 Usage (est)- \$70,000

Collocation Space - \$27,000

Collocation Power (est) - \$25,000

Total costs: \$504,407

Shawn O'Donnell

CXO, L.L.C.

214-755-7835 (mobile)

Declaration of Shawn O'Donnell
WC Docket No. 07-156
August 13, 2007

EXHIBIT 4

August 9, 2007 Bankruptcy Court Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---------------------------|
| In re: | : | Chapter 11 |
| | : | |
| PAC-WEST TELECOMM, INC., <i>et al.</i> , ¹ | : | Case No. 07-10562 (BLS) |
| | : | |
| Debtors and Debtors in Possession. | : | (Jointly Administered) |
| | : | |
| | : | Related to Docket No. 344 |

**ORDER, PURSUANT TO SECTIONS 105(a), 365, 554 OF THE BANKRUPTCY CODE,
GRANTING RELIEF NECESSARY TO DISCONTINUE OPERATIONS IN A 24-STATE
REGION AND THE DISTRICT OF COLUMBIA AND SHUT DOWN THE DEBTORS'
EASTERN NETWORK, INCLUDING (A) AUTHORITY TO REJECT CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (B) AUTHORITY TO
ABANDON CERTAIN PROPERTY, AND (C) OTHER RELATED RELIEF**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (the "Debtors"), for entry of an order granting the Debtors relief necessary to discontinue operations in a 24-state region and the District of Columbia and to shut down a certain portion of their current telecommunications network, mainly the portion that serves the Eastern United States from a switching hub located in New York City (the "Eastern Network"), including (a) authority to reject certain executory contracts—including (i) the circuit leases set forth on Exhibit A hereto (the "Circuit Leases"), (ii) the interconnection agreements and other arrangements with the incumbent local exchange carriers in the states served by the Eastern Network set forth on Exhibit B hereto (the "ICAs"), (iii) an unexpired lease of non-residential real property (the "Real Property Lease") commonly known as 60 Hudson Street, New York, New York (the "Premises") set forth on Exhibit C hereto, and (iv) vendor contracts (the "Vendor Contracts," and together with the Circuit Leases, the Real Property Lease, and the ICAs, the "EN

¹ The Debtors are the following entities: Pac-West Telecomm, Inc. ("Pac-West"); PWT of New York, Inc. ("PWTNY"); PWT Services, Inc. ("PWT"); Pac-West Telecomm of Virginia, Inc. ("PW Virginia"); Installnet, Inc. ("Installnet"); and U.S. Net Solutions, Inc. ("US Net").

² All capitalized terms not defined herein shall have the same meaning ascribed to them in the Motion.

Agreements") set forth on Exhibit D hereto pursuant to section 365 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code" or "Code") which the Debtors previously entered into in connection with the Eastern Network, (b) authority to abandon certain property pursuant to section 554 of the Bankruptcy Code (the "Remaining EN Equipment"), and (c) other related relief pursuant to section 105(a) and other relevant sections of the Bankruptcy Code; notice and opportunity for a hearing having been provided to the parties in interest, which the Court finds was sufficient under the circumstances; it appearing to the Court that it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and that this is a "core" matter pursuant to 28 U.S.C. § 157(b); the Court being fully advised in the premises and just cause for the relief herein appearing; and it appearing that the relief requested is in the best interest of the Debtors, their estates, creditors and other parties in interest, now therefore:

IT IS HEREBY ORDERED

1. The Motion is granted to the extent provided herein.³
2. The Objection to the Motion of Dollar Phone Corp. is hereby overruled.
3. Pursuant to section 365 of the Bankruptcy Code, but subject to the Consent Orders (as defined below) the Debtors are authorized to reject the EN Agreements, subject to the procedures set forth below:

- a. The Circuit Leases, the Vendor Contracts, and ICAs shall be deemed rejected as of August 26, 2007, provided however, that the Debtors shall have the continuing right to extend, and to continue to extend, the

³ It is the position of the United States Federal Communication Commission ("FCC") that the Court's Order approving rejection of the EN Agreements under Section 365 of the Bankruptcy Code does not relieve the Debtors of their obligations to comply with, or seek a waiver of, the FCC regulations governing discontinuance of service. Debtors have filed a notice of discontinuance of service with the FCC pursuant to Section 214 of the Communications Act of 1934, as amended, and 47 C.F.R. Section 63.71. The FCC's approval of the Debtors' notice of discontinuance is pending and is scheduled to be granted on August 26, 2007, unless the FCC notifies the Debtors that the grant will not be automatically effective. The FCC and the Debtors reserve all rights and defenses with respect to this Motion and Order.

rejection date of any Circuit Lease(s), Vendor Contract(s) and/or ICA(s) upon giving notice to the non-Debtor party to such Circuit Lease, Vendor Contract or ICA of such extension and filing the notice with the Court, provided however, that no such extension shall be for less than fifteen (15) days from the date notice is given.

- b. The Real Property Lease shall be deemed rejected as of September 30, 2007 (the "Initial Real Estate Lease Rejection Date"), provided however, that the Debtors shall have the continuing right to extend, and to continue to extend, the rejection date of the Real Property Lease for one or more additional months following the Initial Real Estate Lease Rejection Date upon giving notice to the landlord of such extension of the rejection date no later than the fifteenth (15th) day of the month for which the effective rejection date is presently set to occur and filing such notice with the Court.

4. Subject to the terms of any Consent Order, any claim for rejection damages based on the EN Agreements shall be filed on or before the later of (a) any general claims bar date set by order of this Court or (b) a date 30 days after the date of rejection of such EN Agreement, or be forever barred.

5. With respect to the Remaining EN Equipment, subject to the terms and conditions of the Court's amended order entered on July 10, 2007 (Docket No. 309), which established procedures for the sale, abandonment, or other disposition of *de minimis* assets and pursuant to section 554 of the Bankruptcy Code, the Debtors are authorized to abandon, and forfeit ownership of the Remaining EN Equipment, including any fixtures and personal property remaining on, in or at the Premises as of the end of business on the effective date of rejection of the Real Property Lease, and the landlord or other party in possession may dispose of such abandoned property without liability to any third parties claiming an interest in such abandoned property.

6. The Debtors are hereby authorized to execute such documents and perform such ministerial acts as are necessary to carry out the proposed shutdown of the Eastern Network, so

long as such actions are consistent with the specific relief requested in the Motion as granted by this order.

7. With respect to the subsidiaries of Verizon Communications, Inc., AT&T and its affiliates, Time Warner Telecom Holdings, Inc. and its affiliates, and Level 3 Communications LLC and its affiliates (collectively, "Consenting ILECs"), the granting of the Motion is subject to the terms and conditions of the Consent Orders between the Debtors and the respective consenting ILEC entered by the Court on or after the date of entry of this Order (the "Consent Orders").

8. As to the Debtors' request to reject Circuits and ICAs with Qwest Corporation, Qwest Communications Corporation, and Verisign, Inc., hearing on the Motion is adjourned to August 23, 2007 at 3:30 p.m.

9. The Court shall retain jurisdiction to hear and determine all matters arising from the Motion or related to the implementation of this Order.

Dated: Wilmington, Delaware
August 9, 2007


THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Declaration of Shawn O'Donnell
WC Docket No. 07-156
August 13, 2007

EXHIBIT 5

August 9, 2007 Bankruptcy Court Transcript

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 07-10562 (BLS)
. .
PAC-WEST TELECOM, INC., .
et al., .
. .
Debtors. . 824 Market Street
. Wilmington, Delaware 19801
. .
. August 9, 2007
. 10:00 a.m.
.

TRANSCRIPT OF MOTION HEARING
BEFORE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtors: Saul Ewing LLP
By: JEREMY W. RYAN, ESQ.
222 Delaware Avenue
Suite 1200
Wilmington, DE 19801

Jenner & Block, LLC
By: MICHAEL TERRIEN, ESQ.
ANTHONY PORCELLI, ESQ.
One IBM Plaza
330 North Wabash Avenue
Chicago, IL 60611

Bingham McCutchen LLP
By: JEAN KIDDOO, ESQ.
2020 K Street NW
Washington, DC 20006

Audio Operator: Nicole Schaefer

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(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES CONTINUED:

For Dollar Phone:

Hogan & Hartson
By: EDWARD DOLAN, ESQ.
555 13th Street NW
Washington, DC 20004

Klehr, Harrison, Harvey,
Bransburg & Ellers, LLP
By: MICHAEL YURKEWICZ, ESQ
260 South Broad Street
Philadelphia, PA 19102

For the Official Committee
of Unsecured Creditors:

Brown Rudnick Berlack Israels
LLP
By: WILLIAM R. BALDIGA, ESQ.
One Financial Center
745 Atlantic Avenue
Boston, MA 02111

Womble Carlyle Sandridge
& Rice
By: STEVEN KORTANEK, ESQ.
222 Delaware Avenue
Suite 150
Wilmington, DE 19801

For AT&T:

Potter, Anderson & Corroon,
LLP
By: LAURIE SILVERSTEIN, ESQ.
Hercules Plaza
1313 North Market Street
Wilmington, DE 19801

For the FCC:

Office of U.S. Attorney
By: ELLEN W. SLIGHTS, ESQ.
Wilmington, DE

For DIP Lender:

Pachulski, Stang, Ziehl,
Young, Jones & Weintraub, P.C.
By: ROBERT FEINSTEIN, ESQ.
780 Third Ave.
36th Floor
New York, NY 10017

1 COURT CLERK: All rise.

2 THE COURT: Please be seated. Good morning.

3 MR. RYAN: Good morning, Your Honor.

4 THE COURT: Mr. Ryan, good morning.

5 MR. RYAN: Jeremy Ryan on behalf of Debtors. With me
6 is Mike Terrien. Also we have Tony Porcelli from Jenner Block.
7 We filed pro hac papers yesterday afternoon, and sent them over
8 to chambers.

9 THE COURT: I saw them this morning and signed them.

10 MR. RYAN: Thank you. And also with us is Jean
11 Kiddoo, our regulatory counsel from Bingham.

12 THE COURT: Very good.

13 MR. RYAN: Your Honor, items one and two on the
14 agenda were continued. Item three was the Committee's motion
15 for an order on information sharing procedures and the
16 Committee did file a CNO on Tuesday morning.

17 THE COURT: I think I've signed that. If I haven't,
18 I will. The one observation I had is, we're pretty far into
19 this case to be dealing with this. Was this delayed, were you
20 operating under a confidentiality stipulation?

21 MR. RYAN: I'll happily throw Mr. Baldiga under the
22 bus on this on.

23 MR. BALDIGA: Your Honor, we've had a confidentiality
24 agreement with the Committee since very nearly the beginning of
25 the case.

1 THE COURT: I figured as much. Mr. Kortanek, good
2 morning.

3 MR. KORTANEK: Good morning, Your Honor, Steven
4 Kortanek with Womble Carlyle for the Committee. It did take
5 some time to put the papers together, but the confidentiality
6 provisions sort of protected the Committee in our view. It was
7 important to get it on file, given we knew that filing a plan
8 and disclosure statement were imminent, so it will actually
9 serve a very valid purpose at this point in the cases.

10 THE COURT: Okay, very good.

11 MR. KORTANEK: Thank you, Your Honor.

12 THE COURT: I'll look for the order and I'll sign it.

13 MR. KORTANEK: Thank you.

14 MR. RYAN: Agenda item four, Your Honor, is AT&T's
15 motion. I would like to advise the Court we did, last evening,
16 come to an agreement with AT&T on that motion. I apologize,
17 but it happened after hours, so we couldn't let Your Honor
18 know.

19 THE COURT: Okay.

20 MR. RYAN: And Ms. Silverstein is going to present
21 the terms of that resolution.

22 THE COURT: I was already for you, Ms. Silverstein.

23 MS. SILVERSTEIN: I don't know is that good, or that
24 might be scary a little bit.

25 THE COURT: I have to get the magic decision coin

1 out.

2 MS. SILVERSTEIN: Well Your Honor, I'm relieving you
3 of the burden of tossing that coin. As you know, this was our
4 motion for a ruling that the automatic stay did not apply to
5 litigation in California, vis-a-vis the California Public
6 Utility Commissioners that were defendants in that matter.
7 There were two objections filed. One by the Debtor and one by
8 the Commissioners. We have a stipulated order to hand up and
9 it's my understanding from Mr. Terrien that the Commissioners
10 have reviewed this and have signed off on this as well. And,
11 basically, we have gone further to resolve this matter and as
12 you well see from the stipulation, what we have agreed is that
13 the automatic stay itself will be lifted as to the Debtors and
14 to the extent it applies to the Commissioners. But the
15 automatic stay will be lifted to permit the litigation to go
16 forward in its totality, on the earlier of the entry of an
17 order appointing a Chapter 11 Trustee in the bankruptcy case,
18 the confirmation of any plan of reorganization or liquidation
19 in the case, the conversion of the case to a Chapter 7
20 proceeding, or November 1st, 2007. So, the outside date is
21 November 1st, 2007.

22 The lawsuit will then go forward to conclusion,
23 including any appeals and basically what it does is, it permits
24 our claim, AT&T's claim against Pac West to get liquidated in
25 that forum. But as you will see in the stipulation, any

1 collection actions on the prepetition claim that may arise in
2 that case, will be dealt with in the bankruptcy proceeding.

3 Now, the only twist to that is that as Your Honor
4 knows from reading the papers, there were certain monies placed
5 into --

6 THE COURT: They were interpled.

7 MS. SILVERSTEIN: -- the court's registry and with
8 respect to that, the stay is lifted as well. So, that the
9 Court will rule, and if the Court rules in our favor, that we
10 are entitled to the monies in the registry, we are able to
11 collect those, but not anything on the prepetition claims.

12 So, Your Honor, I will hand up the order. I don't
13 mean to mischaracterize it, Your Honor, will read it, it
14 obviously says what it says, but that's the gist and this way,
15 it will be clear that our claim is adjudicated elsewhere,
16 collection efforts on the prepetition, will be in this court.

17 THE COURT: Okay, please. And, I presume, then, this
18 would get communicated to, or docketed with, the California
19 district court that's entered a stay pending anything I order?

20 MS. SILVERSTEIN: Your Honor, there was a status
21 report to the Court on 30 days. I would assume the parties
22 would make a joint status report and include this order so that
23 California judge understand that he may go forward pursuant to
24 the terms of that order.

25 THE COURT: Okay. Does anyone else wish to be heard

1 on the stipulated order?

2 MR. TERRIEN: No, Your Honor, Ms. Silverstein
3 summarized it well and I did confer with the state PUC's
4 counsel and they've approved it.

5 THE COURT: Okay. Well, noting that counsel for the
6 CPUC, which did file an objection that representations have
7 been made that their objections are resolved and the parties
8 having reached an agreement, I'm happy to enter the order.

9 MS. SILVERSTEIN: Thank you very much, Your Honor.

10 THE COURT: We'll get that on the docket this
11 morning. Number five.

12 MR. TERRIEN: The, I think, last item on the agenda
13 today is the sort of big show. It is the Debtors motion to
14 reject executory contracts and leases and shot down the east
15 coast portion of the Debtors telecommunications network.

16 We have an objection to this, I'd like to make some
17 prefatory statements and then we can kind of move into it.
18 From the first day of this case, Your Honor, I think we told
19 you that the Debtors were burnish cash and needed to reduce
20 their network. I'll wait.

21 THE COURT: Mr. Dolan doesn't want to miss a word.

22 MR. TERRIEN: I want to let him take notes if he
23 wants, that's why I waited. From the first day of this case,
24 we've told you that the Debtors were burning cash and needed to
25 reduce their network costs and match them to their revenues in

1 order to turn cash flow positive and emerge successfully from
2 this case.

3 You've also been told repeatedly, from the first day
4 and in particular, very eloquently by Ms. Silverstein, that
5 these are "thin cases". Those things remain true today and the
6 motion that's before the Court today is a very material
7 component, a critical component, really, of the cost reduction
8 initiative and it's critical and time sensitive, really,
9 because of the thinness of this case. There's been some
10 discussion about, can we put this hearing off, we can reach
11 some kind of compromise and the truth is, the Debtors need the
12 authority to move forward with this initiative today.

13 We have a plan and disclosure statement on file, as
14 the Court has seen. I know we promised it a little earlier
15 than we got it to you, but we still got it pretty early in the
16 case as things go, and we're on a kind of rocket docket effort
17 to get out of Chapter 11. That plan and disclosure statement
18 represents a lot of work by the Debtors and the Committee and
19 the lender, all of whom have negotiated to turn what we spread
20 on the record here on June 4th into a relatively full blown
21 plan of reorganization and disclosure statement.

22 We also need, and I don't know if you noticed or not,
23 but we need additional financing in order to emerge from this
24 case. The initial DIP was not and will not be sufficient to
25 get us through to a confirmation date. We filed the motion on

1 Tuesday to increase the DIP amount by \$5 million dollars.

2 That's something we negotiated very hard with our lender, and
3 we'll need that money as early as September.

4 They also entered into a plan sponsorship agreement
5 with us that provides, really, critical and material benefits
6 to the Debtors in terms of reorganizing. A willingness to take
7 their super priority, fully secured post petition loans and
8 convert a substantial portion of those into equity in
9 connection with confirmation of a plan and their willingness to
10 provide exit financing, that will allow us to emerge.

11 But one of the things that the lenders had wanted is
12 to make sure that we escape from the burden that the east coast
13 network has become. We talked to you a little about bumps in
14 the road and have made some fairly bleak statements in this
15 court in late June and July when things were considerably
16 rockier than they are today. And the truth is that the
17 frustration over what to do with the east coast network was an
18 underlying factor that created a lot of the uncertainty that we
19 had for a period of time.

20 The east coast portion of the network, and if you
21 look at the architecture, it's totally separate except for a
22 couple of lines running between the east and west coast, it
23 burns about \$500,000 a month on its own. We spent much of June
24 and July contacting and working with other parties, seeing if
25 we could get somebody to buy it, take it, in some form or

1 fashion, relieve the Debtors of the burden of that network
2 without shutting it down and everybody who looked at it said,
3 you know what, the rest of this company might be interesting,
4 but you've got to get rid of the east coast network. The
5 lender echoed that thought, and has told us in no uncertain
6 terms that they're not interested in financing a plan that
7 includes the east coast network, and the prospects that we
8 could find and reach out to, some of whom in principle were
9 interested in an east coast network, didn't like this one
10 because there's too little traffic on it and the costs are too
11 high and the costs and timing necessary to turn it around was
12 too problematic. So, we were left where we are, with a real
13 need to get it shut down.

14 Even despite having relatively limited time, a great
15 deal of pressure from our financing source, and real problems
16 with the costs that were being incurred, the Debtors have gone
17 to a great deal of effort to try to make this as smooth and
18 accommodating and undisruptive a process as possible for all of
19 the various constituents who are impacted by a decision as
20 significant as this.

21 We went to the lender and the Committee well before
22 the motion was filed and explained the rationale to them, got
23 their concurrence and I think you'll hear today they're
24 supportive of the decision.

25 Our regulatory counsel, Ms. Kiddoo, who is in the

1 court, has been working with the FCC and the key state
2 regulatory commissions, to make sure that they understand what
3 we're doing and why, and to smooth the process in terms of
4 keeping them happy in terms of complying with their
5 regulations. We went to the major ILEC's in most cases, again,
6 before filing the motion, wanting to talk to them about how we
7 could get the network shut down in a way that is was as un-
8 burdensome to them as possible, that imposed a minimum of costs
9 on them, but that permitted us to come to a date certain and
10 reach the point where our exposure to this cash burning asset
11 was eliminated.

12 We also went to customers. A lot of our customers on
13 the east coast network are also customers on our west coast
14 network, and that includes Dollar Phone, so we were not in any
15 sense insensitive to the need to maintain good will with
16 customers and to make this something that they could handle,
17 for the most part.

18 When we did file the motion and in many cases before,
19 in addition to serving contractual notices that we were
20 exercising our right to reduce the network and regulatory
21 notices that were required, we also initiated a customer
22 calling program. We had a five person team that was dedicated
23 to reaching out to the customers who relief on the east coast
24 network, making sure they knew what was going on, helping point
25 them in the direction of alternative carriers, helping them

1 with technical issues and even discussing with them limited
2 accommodations for extensions in particular areas. If
3 customers have narrow defined short term problems, we're
4 willing to try to accommodate them and not everything has to be
5 shut down the same day, necessarily. We are working very hard
6 with our customers to try to make sure that this happens with a
7 minimum of disruption to them.

8 We also gave the (indiscernible) authority blanket
9 notice that if customers on the east coast needed deport
10 numbers, there didn't need to be a time delay to get Pac West's
11 consent. I'm told that I think, Jean will correct me if I'm
12 wrong, I think it can be like a two or three day process if
13 there's no need to get consent from the existing number holder
14 and we gave that on day one, so that we weren't in a position
15 where --

16 THE COURT: When you said day one, are you referring
17 to the 23rd of July?

18 MR. TERRIEN: The 24th, I believe it -- well, is that
19 right, yeah, 24th of July.

20 THE COURT: Okay.

21 MR. TERRIEN: To make it possible for customers not
22 to be held up, so that they didn't get put in a jam where they
23 couldn't move their traffic off the network that was in the
24 process of going down. And we built into the motion and the
25 order flexibility as to the shutdown date, because we

1 anticipated that there may be customers who say, I can find
2 alternative carriers for this area, and this area and this area
3 and this area, but I've got a problem here and I need an extra
4 week or I need an extra two weeks. And, so we built in the
5 flexibility to keep pieces of the network up for a period of
6 time, in our discretion, where it was really necessary to
7 accommodate a customer's real needs.

8 In short, a lot of careful planning and thought went
9 into trying to make this inherently difficult process, and
10 shutting down a communications network is an inherently
11 difficult process, as painless for all the people affected by
12 it as we possibly could.

13 And we have the support of our key constituents, the
14 lender and the Committee for it and I think our efforts show
15 some -- I wouldn't have guessed, you know, back on the 20th of
16 July when we were still engaged in planning this, I wouldn't
17 have guessed we'd be in the position we're in today. The FCC
18 is here, they're not opposing the motion. In fact, for their
19 own reasons, they going to opposed Dollar Phone's objection to
20 the motion. We've worked with them, we made some changes to
21 the order to accommodate their regulatory requirements and the
22 positions that they wanted to take.

23 None of the state regulatory commissions are here
24 objecting. When we get to the hearing, I hope to hand up to
25 you the consent orders I have with the vast bulk of the ILEC's

1 that provide the telecommunications facilities on the east
2 coast network. We've reached agreements with most of them that
3 cover the vast majority of the network. And we have 66
4 customers in the network and we have one objector today. We've
5 worked very hard with all of them, tried to.

6 THE COURT: Let me ask you one question, though,
7 before we turn to the merits. Exactly how is this matter going
8 to go forward, or going to get reserved with respect to
9 Verisign and Qwest? If you're shutting down, if I grant your
10 motion today, you're going to continue the process or you'll be
11 prepared to shutdown the network, now I haven't seen what their
12 responses are, their responses were informal, so they may be
13 reservations of rights, but I'm not sure how this can go
14 forward today without dealing with Verisign and Qwest. It's
15 not like you're going to carry a chunk of --

16 MR. TERRIEN: Verisign is one circuit, okay, and it's
17 an SS-7 circuit, which maybe somebody can help me with exactly
18 what that is. And I'm told it's the last thing that needs to
19 get shutdown, which is why we continued and we're, frankly,
20 we're exploring the possibility of shutting it down, that
21 rejection motion, we think that may be possible. We're trying
22 to figure that out. Qwest, we do have some different issues
23 with. But Qwest's circuit, again, are discrete. The bulk of
24 the Qwest circuits service one state.

25 THE COURT: Okay. So, what you're telling me is that

1 mechanically, these actually can be dealt in two weeks.

2 MR. TERRIEN: Oh, yeah, yeah.

3 THE COURT: Okay. That's fine.

4 MR. TERRIEN: And along with the notices and Qwest
5 has asked us to do this, along with the notices that we're
6 giving other ILE''s of what we want shut down when, we're going
7 to give them those notices, you know, reserving their rights to
8 object to them, but we're going to give them to them so they
9 have them and they can start planning and preparing for that.

10 As I said, with all of the multitude of constituents
11 who are affected by this and who could be affected by this,
12 we're sitting here today with exactly one objection from one
13 customer.

14 And that objection is noteworthy, I think first and
15 foremost for what it doesn't say. The relief we're seeking
16 here --

17 THE COURT: Well, let me ask a question. I'm not
18 really sure how the parties intend to proceed today. Do the
19 parties have evidence, are we going to proceed on stipulated
20 facts, are we simply going to present argument? I'm happy to
21 take it however you want, but I'd just like to know what's
22 coming. Mr. Dolan?

23 MR. TERRIEN: Well, an affidavit came in after close
24 of business last night and it sis, I guess, our view, I was
25 going to get to this, that it's basically irrelevant. I think

1 that the relief we're seeking requires us to demonstrate that
2 this is a valid exercise of business judgment and nothing in
3 the affidavit challenges that in any way, shape or form.

4 THE COURT: I haven't seen the affidavit. Does
5 anybody have a copy of it?

6 UNIDENTIFIED MALE SPEAKER: May I approach, Your
7 Honor?

8 THE COURT: Please. Thank you. Okay.

9 MR. TERRIEN: And even if that was in question, which
10 it isn't, one of the things that we put in our pleading is,
11 Dollar Phone's --

12 THE COURT: My question is, what are we doing today?

13 MR. TERRIEN: Oh, okay. What are we doing? We don't
14 know.

15 THE COURT: I know where you'd like to be at the end
16 of the day. I'm just trying to figure out how we plan to get
17 there.

18 MR. YURKEWICZ: Good morning, Your Honor, Michael
19 Yurkewicz, Klehr, Harrison, Harvey, Branzburg & Ellers, on
20 behalf of Dollar Phone. With me today is Mr. Edward Dolan of
21 Hogan and Hartson. I believe the Court is familiar with him.
22 Pro hac papers have been filed for Mr. Dolan, but I don't
23 believe that order has been entered yet, and I'd ask that he be
24 allowed to appear today.

25 THE COURT: Certainly, I'll be happy to hear from Mr.

1 Dolan.

2 MR. YURKEWICZ: Thank you, Your Honor.

3 MR. DOLAN: Good morning, Your Honor,

4 THE COURT: Good morning.

5 MR. DOLAN: I think the Court's question is entirely
6 important and I don't think we can go forward today and have
7 the Court issue an order authorizing the turndown of the
8 eastern network, certainly not while there are two objections,
9 informal or otherwise, that are out there, that haven't even
10 been put on the record, that are being carried over to another
11 day.

12 We have to understand what's before the Court and
13 what isn't. In order for Pac West to do that they want to do,
14 they need the approval of this Court and the need the approval
15 of the FCC. Neither one trumps the other. There are two
16 separate regimes, two different sets of authorizations that are
17 required. The response time following the FCC's July 26 notice
18 that Pac West had filed with the FCC, the application to
19 turndown the network, requires responses, comments in by
20 tomorrow. Our firm will be filing those responses on behalf of
21 Dollar Phone.

22 Whatever this Court does, whenever this Court does
23 it, I think has to respect whatever authority the FCC has to
24 regulate what the Debtor does in their own particular regime.
25 So, I don't think they're coming out today because that ongoing

1 FCC process also, particularly with respect to the Verisign and
2 Qwest issues, which we haven't seen any paper on at all, I
3 don't think we can have an order authorizing rejection or
4 shutdown today.

5 The second, Your Honor, what we're going to get into
6 with respect to the affidavit, that we were running to file as
7 quickly as we could and didn't get it filed too early at all,
8 is we describe what Dollar Phone is, what business we're in,
9 how much we rely on Pac West and we're going to talk about
10 timing, Your Honor.

11 This case was filed in April, as late as the middle
12 of June, the Debtor filed with the Court an initial monthly
13 operating report that projected expenses out through October,
14 including several hundred thousand dollars a month for the
15 eastern network. Taking the public position that they were
16 going to be operating the eastern network.

17 THE COURT: Are you suggesting that they're estopped
18 from shutting it down because they filed a budget that the
19 Trustee requires them to file? That budget includes, for
20 example, payments on leases that they're welcome to reject if
21 they wish.

22 MR. DOLAN: I don't think that they're estopped
23 because of that, but because of that, because of the fact --

24 THE COURT: Weighs into the balance.

25 MR. DOLAN: -- indeed, Your Honor. Through the

1 middle of July, they were accepting more service orders from
2 Dollar Phone. And, Mr. Terrien was right, I did want to take
3 some notes as to what he said. I think the most interesting
4 thing that he said was, well before the filing of the motion on
5 the 24th of July, Pac West had the agreement of its lender and
6 the Creditors Committee. Before that motion was filed, they
7 went to ILEC's and sought their cooperation and consent.
8 Before the motion was filed, they went to customers and tried
9 to see what they could do with those customers to ease their
10 pain out of the network.

11 THE COURT: Let me stop you for just one second.
12 What I think I'm gathering is that the parties, and I have your
13 affidavit and I'll accept your affidavit, I realize that you
14 may believe it's irrelevant, I have no position on that at this
15 point, but my -- what I'm gathering from the parties is that
16 you're going to proceed on your papers and argument. Your
17 position, among other things is that, perhaps, this is
18 premature based upon where the FCC is right now and, obviously,
19 I understand your position from your objection as well.

20 But, what I think we're into now are openings. Is
21 that where we are? And I'm not saying you need a witness, but
22 I'm just asking, are parties -- are there witnesses that people
23 are going to call?

24 MR. DOLAN: Mr. Asher Gluck (phonetic) of Dollar
25 Phone is in the court today.

1 THE COURT: Okay.

2 MR. DOLAN: He is the affiant. I don't think that we
3 need him to testify. I'm certainly going to proffer what that
4 testimony would be. If we need cross-examination, we can do
5 that or Mr. Terrien may argue that the testimony is irrelevant.

6 THE COURT: I think that's probably what he'll argue,
7 but my point and I don't mean to interrupt, but my point is
8 just to understand, I just would like to proceed fairly
9 efficiently and I've received what I'll take as essentially an
10 opening from Mr. Terrien and I'm happy to take an opening and
11 argument from you and we'll proceed however you want to
12 proceed, I'm just trying to figure out how we're going to get
13 to where we get to.

14 MR. DOLAN: I think that my statement so far could
15 suffice as our opening statement --

16 THE COURT: Okay.

17 MR. DOLAN: -- and with that, I think that unless Mr.
18 Terrien has witnesses and I defer to him on how he wants to
19 present his case, we can proceed to a hearing on the merits.

20 THE COURT: Okay. Mr. Baldiga?

21 MR. TERRIEN: Because we didn't expect an evidentiary
22 hearing or have any concept that there could be an evidentiary
23 hearing until, basically, last night, we have Shawn O'Donnell
24 on the phone if necessary. He's the company's COO. We don't
25 have him here.

1 THE COURT: That's fine, and I don't want the parties
2 to misconstrue my comments. I don't necessarily believe that
3 this needs to be an evidentiary hearing and I think that Mr.
4 Dolan and you, Mr. Terrien, probably agree with that. At the
5 outset of this, I'm always just not certain how the parties
6 intend to proceed when we've got what seem to be at least some
7 factual disputes as well as what may be a pure legal argument.

8 So, I'm happy to proceed, I think, on the papers. I
9 think that's appropriate, but the reason for my question was
10 not that I believe that we need a full blown dog and pony show
11 with evidence and witnesses, but rather whether or not the
12 parties intended to do so, really for scheduling purposes. I
13 have a lot of stuff going on today.

14 MR. TERRIEN: Yes. And I think we're fine proceeding
15 on the papers and argument, Your Honor.

16 THE COURT: Okay. Mr. Baldiga?

17 MR. BALDIGA: Thank you, Your Honor. William
18 Baldiga for the Official Committee of Unsecured Creditors. We
19 have, Your Honor, just a few words, in terms of argument. We
20 don't intend to be presenting evidence on our own, but we --
21 this is a fairly critical matter in the case and the
22 Committee's position, I think, needs to be heard.

23 A couple points of emphasis, Your Honor. One is,
24 that this is something that has been very much vetted by the
25 Committee. It's one of the issues that doesn't seem to have

1 been -- there's no objection to this, but just to support the
2 comments on the Debtors business judgment, we've had our own
3 investment, Chanin also very much challenge that, informally
4 cross-examine the Debtors as to all alternatives to this
5 shutdown. We're satisfied, including through the independent
6 efforts of Chanin to reach out to third parties, that the
7 shutdown is, indeed, the best decision for this enterprise as a
8 whole, which I think is the critical decision before the Court.

9 We sympathize with Dollar Phone. I mean this, if
10 approved today, is likely to give rise to some rejection
11 claims. That's the nature of the beast that we're all engaged
12 in here today and the fact that that may occur is not a good or
13 bad thing, it's just that it's a consequence of what happens as
14 businesses are right sized in a Chapter 11 proceeding.

15 We do think, Your Honor, that it is very possible
16 that allowance of this today, may well be the difference
17 between the confirmation of a plan of liquidation and the
18 confirmation of a plan of reorganization in this case, and that
19 is an important distinction. Not just for the treatment of
20 unsecured creditors but for the well being of those who are
21 continued to be employed by the company.

22 At the end, Your Honor, I think that this is a legal
23 issue and one really that actually goes to the heart of -- and
24 it really goes to the heart of what a Chapter 11 case is about,
25 reduced to its essence, and, again we do have sympathy with it

1 because these are the types of claims that we represent as the
2 Committee. Dollar Phone -- it's a matter of pro rata treatment
3 of claims. The cost here, you've heard, is something in the
4 magnitude of \$500,000 a month, we think that is the right
5 range. It's a considerable sum in light of this case. I know
6 there were papers filed that indicated that the Debtor was
7 going to continue with this part of the business for some time.
8 There was also a couple hearings of which the viability of the
9 business as a whole was somewhat put into question and for
10 every word set in front of the body and seer, there were a
11 couple more words set in private.

12 THE COURT: My recollection was five hearings in
13 seven days.

14 MR. BALDIGA: Yes. I think it's fair to say to those
15 who have been involved in the case throughout, that viability
16 has been an issue since day one. And, this is a step towards
17 viability, a major step towards viability.

18 But getting back to the pro rata treatment, what
19 Dollar would like and you can't blame them for asking it, is
20 for the other unsecured creditors to subsidize their claim. Of
21 course, their damage, harm, claim, whatever is going to be
22 minimized the longer they can delay this shutdown. But the
23 people who are -- but it's really just an allocation of harm
24 because the quicker this is done, the better off the enterprise
25 is and the better off all the constituents, including the

1 general unsecured creditors. And the bigger the claim that
2 Dollar may have, but the alternative to that is simply that
3 Dollar's damage is weighed equally on a pro rata basis, with
4 the claims of all the other creditors who have been caught up
5 in the distress of this business. And Chapter 11, if anything,
6 stands for the proposition that Debtors are entitled in a
7 Chapter 11 proceeding, especially as Mr. Terrien says, strictly
8 in accordance with their contract here, nothing more is being
9 asked of this Court and it's -- you know, we all participated
10 in cases where people are trying to shorten up those
11 contractual periods.

12 To simply have Dollar's claim be treated as on equal
13 terms with the many other claims that will be at the end of the
14 day treated under the plan, that's an unfortunate consequence
15 for Dollar but it's what the bankruptcy code provides in these
16 types of situations and, you know, any other alternative really
17 skews horribly the purpose of treating creditors on an equal
18 footing. So, thank you, Your Honor.

19 THE COURT: Thank you.

20 MR. FEINSTEIN: Your Honor, it's Robert Feinstein on
21 the telephone for the DIP lender.

22 THE COURT: Good morning.

23 MR. FEINSTEIN: May I be heard briefly?

24 THE COURT: Certainly. Good morning.

25 MR. FEINSTEIN: Thank you. Your Honor, I find myself

1 in complete agreement with Mr. Baldiga, with regard to his
2 observations, so I can keep it brief.

3 The shutdown of the eastern network as determined by
4 the Debtor in its business judgment is something that the DIP
5 lender concurs with. It is a predicate to the plan of
6 reorganization that was recently filed and Pac West fundings
7 commitment to fund the plan is essentially predicated on
8 turning what has been a cash losing business into a business
9 that in the foreseeable future, could turn cash positive.

10 And, without the immediate shutdown of the east coast
11 network, I don't see any basis for that to happen. So, this
12 is, as Mr. Baldiga and Mr. Terrien both pointed out, a critical
13 step towards confirming a plan in this case, which will provide
14 an ongoing enterprise and some recovery to unsecured creditors.

15 The alternative of not shutting down the network
16 would lead, I believe, inevitably, to a liquidation where all
17 creditors will lose, both unsecured and secured.

18 I just want to make one final statement since words
19 on the record sometimes take on more meaning than they're
20 intended, during the course of his opening, Mr. Terrien
21 indicated that he had -- there was some pressure from the
22 secured lender to shutdown the east coast network. I want to
23 be very clear in the record, Your Honor. This was the Debtors
24 determination, it was vetted with, among others, the secured
25 lender and the unofficial committee and we concur in the

1 Debtors business judgment, that this was not something that the
2 secured lender was in any way pressuring the Debtor to do, I
3 think we were all looking at the same business reality which is
4 that the east coast is a major drain on the company's cash and
5 that if it can't be shutdown, it simply impairs the viability
6 of the enterprise. We support the relief that the Debtor is
7 seeking today and would urge the Court to enter the relief
8 today. Thank you.

9 THE COURT: Okay, thank you.

10 UNIDENTIFIED MALE SPEAKER: May we be heard for just
11 a second?

12 THE COURT: Certainly. Mr. Terrien.

13 MR. TERRIEN: I just want to clarify a couple things
14 and I apologize, Your Honor, I'm really cleaning up the things
15 that -- things on the record, including some things that I've
16 said.

17 First of all, there was -- I may have used the word
18 well before, and certainly the Committee and the lender are the
19 two constituents that we consult with most on this case, and
20 those two constituents did have, and well in this case, means
21 probably a week or two of notice, not months. It's not like
22 we've been hiding this, it evolved and they were the first
23 people we went to to talk to. The ILEC's had, I think, a days
24 notice. It's not -- we started telling them as soon as we
25 could, but it's not like we hid this ball for a long time from

1 people like the customers and some of the customers and I
2 believe, I don't have the witness here, I'm informed, that
3 Dollar Phone is one of them, was told in advance of filing the
4 motion. So, I don't think that we did anything to prejudice
5 them.

6 I do need to -- the bumps in the road we've talked
7 about and the difficulties in financing this case have raised a
8 great deal of artfulness between Mr. Baldiga, myself and Mr.
9 Feinstein and Mr. Feinstein said something on the phone that,
10 again, I don't want at some point to be taken out of context or
11 misunderstood in the record. Mr. Feinstein said that shutting
12 this down was a predicate to their financing and in his mind it
13 is. In Mr. Baldiga's mind it isn't, for reasons that we don't
14 need to go into today because they're not at issue and we're
15 not fighting about them today. But I just wanted to put on the
16 record that they've reserved their rights on that and we're
17 trying to move past it.

18 Lastly, to the question of the FCC, I just wanted the
19 Court to know, Ellen Slights from the U.S. Attorney's Office is
20 here on behalf of the FCC. We have talked to them in advance.
21 And we have made some changes to the order to accommodate them.
22 They oppose Dollar Phone's objection and they don't have an
23 objection to the rejection order we're seeking today about what
24 --

25 THE COURT: I'd like to hear from Ms. Slights. Ms.

1 Slight, good morning.

2 MS. SLIGHTS: Good morning, Your Honor. Ellen
3 Slight with the U.S. Attorney's Office representing FCC.

4 The FCC takes no position with regard to the merits
5 of the motion that's pending before Your Honor, however, we
6 have had conversations with the Debtor and expressed our main
7 concern which is that the Debtor comply with the FCC regulatory
8 process.

9 The Debtor, so far, has appeared to have complied
10 with the process. Its filed a termination application with the
11 FCC, and which is now pending, and their application is
12 scheduled to be granted on August 26th. There is process in
13 place where people who disagree with the termination can object
14 and that process historically has been a process that has very
15 rarely been granted by the FCC. The burden of proof is high on
16 the objector.

17 Because, as of yesterday afternoon, the FCC was
18 unaware of any objectors, the FCC didn't object to this motion,
19 and at this point, Your Honor, what we would say is that Dollar
20 should be turning to the FCC and not to this court to see any
21 sort of extension.

22 THE COURT: Let me ask you a question and if you
23 don't know the answer that's fine, I realize that you're not
24 the FCC. Mr. Dolan suggested that it's essentially a two track
25 process, that first they need approval or authorization from me

1 to shut this down, but also they need approval or authorization
2 from the FCC and they're essentially independent. You can't
3 shut it down without getting both of us. Is that correct?

4 MS. SLIGHTS: Your Honor, I heard him say that and I
5 wasn't exactly sure and I can't speak for the FCC, I can tell
6 you, though, Your Honor, that the FCC has not filed an
7 objection to this motion but that it is absolutely their
8 position that the Debtor has to comply with the FCC process,
9 and the Debtor appears to be complying with the regulatory
10 process up to this point.

11 THE COURT: Well;, there's -- I guess what I'm
12 struggling with is, is a timing issue. The relief requested by
13 the Debtor is to shut this down on the 23rd of August, correct?

14 MS. SLIGHTS: The 26th of August, Your Honor, which
15 will --

16 THE COURT: Oh, is that the change to the order that
17 you've discussed?

18 MS. SLIGHTS: -- that is one of the changes, Your
19 Honor, and that will then dovetail with the FCC's termination
20 provision.

21 THE COURT: Okay. All right. Then that process
22 makes a little bit more sense to me now because obviously if
23 you had shut it down, the FCC's hand is sort of forced. I
24 think.

25 MS. SLIGHTS: Yes, Your Honor. So, the changes that

1 we've made to the order were basically a reservation of rights,
2 that FCC's position is is that this motion would not affect the
3 FCC regulatory process and that the Debtor would have to comply
4 although I don't know that the Debtor has necessarily agreed
5 beyond the initial application, that that is true, but
6 certainly we've reserved our rights, but we also did change
7 that date so that now the order would be in concert with the
8 date of the pending -- the pending termination date of the FCC.

9 THE COURT: Okay. Thank you. I think you've
10 answered my question.

11 MS. SLIGHTS: Thank you, Your Honor.

12 THE COURT: Mr. Dolan? I think I interrupted your
13 opening, so feel free to begin or resume wherever you were.

14 MR. DOLAN: Again, I think as far as the opening,
15 that will suffice, Your Honor, but there are a couple of things
16 I'd like to point out in light of some of the other comments
17 made, specifically, with respect to the FCC.

18 We, I don't think, are taking the position that Pac
19 West is in violation of FCC procedures. We have until tomorrow
20 to submit our comments and that will be done. We're not here
21 asking that the Court, in black and white terms, deny the July
22 24 motion. We're here only talking about the deadlines and the
23 dates. We accept and we have taken to heart the fact that we
24 end to move 30,000 lines and several hundred thousands of our
25 customers to new providers, in 20 markets, and approximately

1 one half of the eastern network. Half of the eastern network
2 can be shutdown today and it will have no impact on us. But
3 the half of the eastern network that we rely on represents 60
4 to 70 percent of the capacity that we provided to our
5 customers.

6 In terms of what the FCC has done, a quick review of
7 the cases over the last five years would reveal that in LDMI,
8 Intelergy, in Choice One, in Corbin and in E-Spire, the FCC
9 exercised its authority in the context of a request to
10 discontinue service, can order that the service be continued to
11 be provided for anywhere from a week to ten days, to 120 days.

12 THE COURT: Well, isn't that consistent, and I don't
13 have those cases, I'll take your word for it, but isn't that,
14 then, consistent with exactly what Ms. Slight's just said, which
15 is that your remedy, or perhaps your best remedy, lies with the
16 FCC for buying additional time?

17 MR. DOLAN: And we will, in fact, be pursuing that.
18 Your Honor, a comment that was made by counsel for the
19 Committee was that the Debtor here is looking to do simply what
20 it's allowed to do under the contract. That's entirely correct
21 if one disregards the Pac West form of contract that we signed,
22 that they signed, that has Section 20.7 in it that says in the
23 event that they want to terminate our service, for a reason
24 other than our default, they have to give us a reasonable
25 opportunity to move our services elsewhere. And that Section

1 20.7 identifies that reasonable opportunity is 12 months.

2 THE COURT: But they're not terminating the contract,
3 they're breaching it, via rejection under 365, right? So, that
4 if they gave you, for example your statutory, or your
5 contractual termination, then you wouldn't have a claim,
6 because you would have had whatever rights, even if you
7 couldn't transition over, you would have had whatever your
8 contractual rights are. I don't think Mr. Baldiga or Mr.
9 Terrien are going to deny that they're breaching the contract,
10 isn't that correct?

11 MR. DOLAN: I wasn't suggesting anything other than
12 two things, Your Honor. One is that they're not doing simply
13 what they're allowed to do under the contract.

14 THE COURT: Agreed.

15 MR. DOLAN: Second --

16 THE COURT: But they are doing or they're proposing
17 to do what they're allowed to do under the code, which is to
18 breach the contract.

19 MR. DOLAN: And it's a question of when they're
20 allowed to implement it, all things considered.

21 THE COURT: Okay.

22 MR. DOLAN: And all of the things considered, I
23 think, includes an acknowledgment of the parties, in a written
24 agreement between them, over what kind of time is necessary in
25 order to move the amount of traffic we have. We're not asking

1 that the motion be denied, we're only asking that the effective
2 date for what we need, which is not all of it, be pushed back a
3 little bit.

4 THE COURT: Well, let me ask you a question. Does
5 the code permit me to consider the impact on non-debtor
6 contract parties in the context of a rejection? The case law
7 as I read it is, it's simply business judgment, there is no
8 balancing test and let's start with the assumption and I
9 appreciate counsel's candor, I think -- I'm certainly
10 sympathetic to the position that your client is in and I will
11 accept your representations and subject to Mr. Terrien's right
12 to cross-examine, I will accept the affidavit that I've had a
13 chance to go through quickly, but can I, am I allowed in a 365
14 rejection motion, am I allowed to factor in the harm to the
15 other party? Every landlord takes it in the teeth when the
16 debtor rejects in November. A retail landlord and they'd say,
17 you're killing me here. You can't reject today and that's only
18 two or three or five or ten thousand dollars for another months
19 rent. Just get me to January 1. I'd have every landlord in
20 the country coming in. Am I allowed to take that -- whether I
21 should or not is a different thing, I'm not even certain I'm
22 allowed to take that into account.

23 MR. DOLAN: I think, Your Honor, every party that
24 comes before you has to come before you in good faith. It has
25 to come before you with clean hands. It has to come before you

1 with a record before this court and in dealings with other
2 parties that it embraces and doesn't have to hold at arms
3 length. That includes debtors desire to get out of a
4 particular line of business. We're not in the first day of
5 this case and we're not here two years into it either. We're
6 several months into the case, a decision was made which we were
7 uninformed of, before the filing of the motion, to exit a
8 network, attempt on a 30 day notice, the Debtor in its motion
9 describes a theoretical willingness to tweak the service, maybe
10 continue some services, maybe for some period of time, on some
11 terms and conditions, but that's entirely within the discretion
12 of the Debtor. The parties are talking as they should be
13 talking and we will pressing our case before the FCC.

14 But I think at this point, Your Honor, in light of
15 the damage that's going to be done to my client, and to its
16 customers, that it is well within the jurisdiction of this
17 court if it grants the Debtors motion, and we don't take issue
18 with the fact that the Debtor has decided and its lender has
19 decided and the Committee has decided, its shutting down the
20 eastern network eventually is consistent with what they
21 currently envision as a workable plan. We don't take issue
22 with that today. What we take issue with is the timing.
23 There's nothing magical about the 23rd of August or the 26th of
24 August, there is something magical about a date which may be 30
25 days after that, or 60 days after that, because we're running

1 as fast as we can to move our lines and move our capacity
2 elsewhere.

3 THE COURT: Well, let's accept the Debtors
4 representations that the burn rate on this is \$500,000. Then
5 there is something magical about the difference between one
6 month and another month, isn't there?

7 MR. DOLAN: Given the Debtors motion, I think the
8 average burn rate, negative cash flow is about \$480,000 a
9 month. I don't know how that spreads across the markets, but
10 given the fact that Dollar Phone is interested in only one half
11 of the eastern network, let's apply some rough math and say
12 it's half -- we can shut down half of the network today, as far
13 as we're concerned, and it won't impact us, that would, I think
14 reduce the burn rate, rough math would suggest it might come
15 down in the nature of \$240,000, we hope to be able to move some
16 of the capacity off by the 26th of August, and hopefully, you
17 know, we're not going to, in the other remaining markets, hold
18 out to the last minute and move it at the last date. We want
19 to move it as quickly as possible.

20 If the Debtor were coming to us and saying, we want
21 to turn down the network today, we'll turn down half of it, our
22 negative burn rate is then \$240,000 a month, here's a schedule
23 of what we would need you to do to come forward to help us on a
24 daily, weekly, monthly basis to keep up only the things you
25 need, that's a conversation that should be occurring.

1 I don't know if we would be in the position to pay
2 it, I don't know what they're going to be asking for, if
3 anything, but in the cases in the past where the FCC has
4 ordered continued service, they have not required customers to
5 pay the increased costs. This is more than just a case of
6 allocation of risk, or allocation of costs, Your Honor. This
7 is a Debtors ability to operate in Chapter 11, giving
8 assurances to a customer that bankruptcy will have no impact on
9 them, except for the fact that we're going to put you out of
10 business in 30 days, and then that comes as a surprise and a
11 shock.

12 We understand the eastern network is going away,
13 we're just asking that the date be pushed back.

14 THE COURT: I understand. Thank you. Mr. Terrien.

15 MR. TERRIEN: First of all, the last comment Mr.
16 Dolan made, I thought, was worth picking up on, even though I
17 think the fundamental point is the point the Court is focused
18 on, that this is a motion that should be granted if the Debtors
19 exercise of business judgment is reasonable.

20 But just to give the Court some additional comfort, I
21 mentioned in my opening, which I never even finished, that we
22 had 66 customers on the eastern network, and there's one here
23 objecting. I mentioned that we initiated a telephone
24 communication program immediately, to talk to customers about
25 what they needed to make this painless. The reason we have one

1 objector and 65 non-objectors is because those customers who
2 thought that this was going to be challenging, most of them
3 have initiated a substantive dialogue with the Debtor weeks
4 ago, about what their particular challenges were and how we
5 could help. Dollar Phone simply didn't. We asked them to, I
6 personally spoke to Dollar Phone's general counsel and asked
7 them to and the first, even remotely substantive information
8 we've gotten from them other than we need you to keep the whole
9 network up for three to eight months, which we simply don't
10 have the resources to do, was last night and it was an e-mail
11 listing 11 or 13 states that they need up, that's it. Nothing
12 by LADA, no offer and there had been discussions about paying
13 some of the costs and granting this motion, I made this point,
14 won't prevent those discussions from continuing. There's 17 or
15 18 days between now and the 26th of August, and the Debtors are
16 willing to enter into more substantive discussions, to do
17 particular things to help Dollar Phone for particular prices
18 that make sense. We've always been willing to do that, we
19 asked them to begin to engage in those discussions, literally,
20 on or about when the motion was filed. And we've had those
21 discussions with a lot of customers and we made a lot of
22 progress at making this happen with people who have engaged
23 constructively. It just hasn't happened here.

24 The other thing I wanted to say has to do with this
25 question of a breach of their contract and Section 20.7. If

1 you read our pleadings carefully, it's in Section 18 that the
2 30 day notice is and it's a 30 day notice for reducing the
3 regions we service which is what we're acting on. We, in fact,
4 have not rejected this contract. We may, we may have to, but
5 we have not and this motion doesn't seek authority to reject
6 this contract. And we haven't given them any notice of
7 termination of this contract.

8 As I mentioned, they have traffic on the west coast
9 and part of the reason we're willing to try to work with them
10 on the east coast is, because we'd like to keep them as a
11 customer on the west coast. 20.7 is entirely premised on, upon
12 termination of this agreement. It's inapplicable. It's not
13 what we're doing. And it also says that -- even if it were
14 applicable, it says that the 12 month period Mr. Dolan
15 referenced, we only have to give them, if we have "the
16 necessary or an appropriate premises, facilities and connection
17 arrangements" which, as you said, you know, we're not going to
18 have, fairly shortly, because Section 365 gives us the power to
19 exit from those.

20 THE COURT: Okay, thank you. Does anyone else wish
21 to be heard? Okay. I'm going to grant the motion and overrule
22 the objection. In so doing, I will observe, as I said, that I
23 am sympathetic to the position of Dollar Phone, but the fact is
24 that under Section 365 of the Bankruptcy Code, the applicable
25 standard is the exercise of the Debtors reasonable business

1 judgment. It is my belief and my interpretation of Section 365
2 that it neither contemplates, nor permits, a balancing or an
3 evaluation of a potential harm to the non-debtor party in
4 connection with a rejection of a contract.

5 It would seem to me that if that balancing were
6 required, then the right of the Debtor to reject under 365
7 would be substantially limited and I think that there are no
8 courts that have taken that position.

9 That much having been said, the position of Dollar
10 Phone is certainly sympathetic but it is also not terribly
11 unusual in the context of a Debtor that is either liquidating
12 or reducing the size and scope of its operations. By
13 definition, rejection of a contract gives rise to breach and to
14 rejection damages, but as a practical matter it also gives rise
15 to substantial disruption in the commercial lives of the
16 non-debtor parties to the contracts. That is a simple fact of
17 bankruptcy life. It gives rise, again, to rejection damages
18 claims which I assume that Dollar Phone will have, but based
19 upon my review of the objection and my review and acceptance of
20 the affidavit of Mr. Gluck, which I have accepted into
21 evidence, I will nevertheless, order that the motion be
22 granted.

23 I also note that at least from the argument presented
24 by counsel, it does seem that the appropriate forum for
25 presentation of the concerns that Dollar Phone expressed today,

1 is with the FCC. I don't know whether or not there will or
2 won't be success for Dollar Phone at the FCC, but it would
3 appear at least from the representations about how prior cases
4 and proceedings have occurred there, that the applicable
5 standard and the considerations are somewhat different than
6 they are in a bankruptcy court. So, based upon that and based
7 up the support of the Official Committee of Unsecured Creditors
8 as well as the support of the Debtors' primary secured lender
9 and the lack of opposition by the FCC, I will grant the motion.

10 Mr. Terrien, do you have a revised form of order? Mr. Dolan?

11 MR. DOLAN: Your Honor, we had not seen the comments
12 made by the FCC to the order. I would simply ask if the Court
13 in entry of any order, would give due regard to leaving it
14 clear that what issues are or are to come before the FCC are
15 not precluded by your ruling here.

16 THE COURT: Well, you raise a good question and I'm
17 not sure how I can answer that because I have accepted your
18 representations as well as Ms. Slight's representations
19 regarding proceedings before the FCC. It's obviously no secret
20 I was not and am not an FCC lawyer, I have never participated
21 in those proceedings, so I am not sure exactly how an FCC
22 hearing or that process unfolds and I will say, simply, that my
23 order will provide what it provides and the FCC can determine
24 whether the extent to which under their procedures, it has an
25 impact on their decision making process. I don't think that I

1 can rule today in a way that I could, for example, if this were
2 a rejection of a lease and there would be a state court
3 proceeding about claims administration. That, I might have a
4 handle on. This, I don't know if I am going to comment on what
5 will happen before the FCC.

6 MR. DOLAN: I understand, Your Honor. One other
7 comment, if I might be permitted. And it pertains to the FCC.
8 Mr. Terrien twice said to this Court, the FCC opposes our
9 objection, the objection of Dollar Phone. I did not hear the
10 representative of the U.S. Attorneys Office say that.

11 THE COURT: Ms. Slights?

12 MS. SLIGHTS: Your Honor, Ellen Slights for the FCC.
13 Your Honor, we do not strictly oppose or make any comment on
14 the merits of Dollar Phone's application. We just believe that
15 the appropriate forum for that application is the FCC's
16 regulatory process.

17 THE COURT: Okay. And I believe in my ruling, I did
18 not hear her say that the FCC opposed Dollar Phone's position
19 and I think in my ruling I noted that the Debtor had obtained
20 the affirmative support of the Official Committee and their
21 secured lender, and the lack of opposition of the FCC to their
22 request. So, based upon that I was satisfied that the motion
23 should be granted, and then I believe you can proceed before
24 the FCC as you've suggested.

25 MR. DOLAN: I appreciate that clarification.

1 THE COURT: Certainly. Mr. Terrien, shall we look at
2 the order?

3 MR. TERRIEN: Yes, let me make a couple comments
4 about this FCC issue and I'll ask Mr. Kiddoo to jab me if I
5 stray. But first of all, I apologize if -- I did tell the
6 Court that the FCC was opposing their specific objection in
7 this court, and I think I said, for their own reasons. Their
8 own reasons were that they -- it is their position that this is
9 not the proper forum for that to be heard, and I Ms. Slights
10 told me this morning that they were opposing it and now it's
11 become, take no position, and I'm not going to -- we're beyond
12 that.

13 The language that we've added to the order, however,
14 I think is important. There's a footnote three that says, "It
15 is the position of the United States Federal Communications
16 Commission that the court's order approving rejection of the EN
17 agreements under Section 365 of the bankruptcy code does not
18 relieve the Debtors of their obligations to comply with or seek
19 a waiver of, the FCC regulations governing discontinuance of
20 service. Debtors have filed a notice of discontinuance of
21 service with the FCC, pursuant to Section 214 of the
22 Communications Act of 1934 as amended, and 47 C.F.R. Section
23 63.71, the FCC's approval of the Debtors notice of
24 discontinuance is pending and is scheduled to be granted on
25 August 26, 2007, unless the FCC notifies the Debtors that the

1 grant will not be automatically effective. The FCC and the
2 Debtors reserve all rights and defenses with respect to the
3 motion and order."

4 In our discussions, we did discuss whether this court
5 or the FCC had primary jurisdiction and we take the position
6 that this court has jurisdiction. The FCC takes the position
7 that they have primary jurisdiction and, frankly, unless you
8 come to different decisions nobody is ever going to have to
9 resolve that and it's my understanding the FCC would rather we
10 didn't fight about that. That's why we left this the way it
11 is, it's a reservation of rights for them.

12 THE COURT: Well, so that the record is clear, and I
13 think my comments such as what they were would indicate this, I
14 am not ruling on that jurisdictional questions.

15 MR. TERRIEN: I understand that.

16 THE COURT: That's not before me and I, frankly,
17 haven't thought of it.

18 MR. TERRIEN: That is exactly what we agreed on with
19 the FCC, that you would not rule on that issue.

20 THE COURT: Okay.

21 MR. TERRIEN: I also want to point out that in
22 addition to any ability to effectuate a turn down pursuant to
23 FCC regulations, there is a separate, and we discussed it,
24 contractual basis for authorizing the Debtor to turndown the
25 services that are provided to Dollar Phone. So, that is just a

1 separate basis for supporting the overruling of their objection
2 today.

3 In terms of changes, one of them we've already talked
4 about. The date went from August 23 to August 26th to
5 accommodate an FCC regulation that requires 30 days from the
6 date they give public notice, as opposed to the date we give
7 notice. So that change was made.

8 The footnote three that I described was added. There
9 are a couple of provisions where this order says subject to the
10 terms of any consent order and I think I mentioned to the Court
11 that I have several consent orders with various ILEC's
12 governing how the turndown is going to proceed with respect to
13 those ILEC's.

14 In paragraph -- paragraph seven says that as well.
15 In paragraph eight, adjourns the motion as to Qwest and
16 Verisign. I think those are the changes.

17 THE COURT: Okay. Anyone else have anything to add
18 with respect to the form of order?

19 MR. TERRIEN: And, then, Your Honor, we have consent
20 orders with Level 3 Communications, Verizon Communications,
21 Time Warner, and -- it must be AT&T.

22 UNIDENTIFIED MALE SPEAKER: AT&T, yes.

23 THE COURT: Okay. And these are what?

24 MR. TERRIEN: These are consent orders that provide
25 specific modifications to the relief granted in the general

1 order addressing how the Debtors and the respective ILEC's are
2 going to conduct the turndown of their particular circuits,
3 whether through rejection or discontinuance and when the
4 Debtors liability terminates and -- most of it is mechanics,
5 has to do with submitting spreadsheets, what has to be on the
6 spreadsheets, the discontinuance dates, right of the -- there
7 is provisions in most or all of these that say that these
8 individual ILEC's won't be liable for discontinuing circuits
9 that are discontinued pursuant to the rejection.

10 THE COURT: Okay. Mr. Baldiga, have you had an
11 opportunity to review the consent orders?

12 MR. TERRIEN: Most of them were concluded late
13 yesterday, Your Honor.

14 THE COURT: Well, actually, then, I'll ask you, do
15 you have any opposition to the consent order?

16 MR. BALDIGA: Well, prudence would say, Your Honor,
17 that I should take a couple minutes to read them.

18 THE COURT: Why don't we do ths. You can take a look
19 at them and I was going to sign them in chambers, in any event.
20 But they appear routine to me. Does anyone else wish to be
21 heard with respect to the proposed consent orders? Okay.

22 Mr. Baldiga, you can take a look at them and then you
23 can simply provide, assuming that they're fine, you can give
24 them to the court reporter and I'll get them signed today. I
25 have signed the order, the revised form of order regarding the

1 motion that the Debtor has submitted and we'll have that on the
2 docket today.

3 MR. BALDIGA: I'll literally sit here and do that
4 right now.

5 THE COURT: Okay.

6 MR. BALDIGA: Thanks.

7 THE COURT: Mr. Terrien, do we have anything further?

8 MR. TERRIEN: That's it, Your Honor, thank you very
9 much.

10 THE COURT: Very well, stand in recess.

11 *****

12 **CERTIFICATION**

13
14 I, ELAINE HOWELL, court approved transcriber, certify that
15 the foregoing is a correct transcript from the official
16 electronic sound recording of the proceedings in the
17 above-entitled matter and to the best of my ability.

18
19
20
21 /s/ Elaine Howell

Date: August 10, 2007

22 ELAINE HOWELL

23 J&J COURT TRANSCRIBERS, INC.

24

25

Declaration of Shawn O'Donnell
WC Docket No. 07-156
August 13, 2007

EXHIBIT 6

July 24, 2007 Letter to NPAC

July 24, 2007

Number Portability Administration Center (NPAC)
c/o NeuStar, Inc.
Attention: Legal Department
4600 Center Oak Plaza
Sterling, VA 20166

Fax: (253) 563-5602

Dear Sirs:

Request for Expedited Number Porting Procedures in Certain States and the District of Columbia

As part of its reorganization under Chapter 11 of the Bankruptcy Code, Pac-West Telecomm, Inc. and Pac-West Telecomm of Virginia, Inc. ("Pac-West") have issued notices to their service provider and end-user customers that they intend to discontinue all services in the District of Columbia and the following states ("Exited Markets"):

| Pac-West Exited Markets | | | | |
|-------------------------|----------|----------------|--------------|----------------|
| Alabama | Illinois | Michigan | New Jersey | South Carolina |
| Delaware | Indiana | Minnesota | New York | Tennessee |
| District of Columbia | Kansas | Mississippi | Ohio | Texas |
| Florida | Kentucky | Missouri | Pennsylvania | Virginia |
| Georgia | Maryland | North Carolina | Rhode Island | Wisconsin |

After a careful review of its options, Pac-West has concluded (i) that discontinuing services in the Exited Markets is essential to its ability to reorganize under Chapter 11, and Pac-West is therefore applying to the Bankruptcy Court for approval to reject contracts for services in the Exited Markets, and (ii) that the continued availability of financing for its operations in the Exited Markets is not assured, which could jeopardize Pac-West's ability to continue to provide service during the Chapter 11 proceedings.

Pac-West anticipates that it will be able to continue providing the services in the Exited Markets for 30 days after the date of the notices. However, there is no assurance that it will have continued financing for operations in the Exited Markets even for this period. Pac-West has therefore notified its customers in the Exited Markets that they must immediately make alternative arrangements for their services in the Exited Markets and convert those services to new providers as quickly as possible.

This action affects services only in the Exited Markets. Pac-West's services in other states are not affected by these notices.

Nearly all of Pac-West's service provider and end-user customers in the Exited Markets will have to port their telephone numbers to other providers. We anticipate the possibility that Pac-West's limited remaining staff could be overwhelmed by the volume of number portability requests. Pac-West therefore requests NPAC to process number porting orders affecting services in the Exited Markets as expeditiously as possible. To the extent that its approval is required for any of the porting process, this letter provides Pac-West's approval. Specifically,

- By this letter Pac-West hereby approves any otherwise validly submitted order or request to port a number currently assigned to Pac-West in the Exited Markets.
- To the extent that there are other activities where, under normal circumstances, NPAC typically would wait to process the port-out request based on confirmation from Pac-West or some other affirmative act by Pac-West, Pac-West hereby authorizes NPAC to process the port out request without waiting for such confirmation or other affirmative act by Pac-West.
- Pac-West also authorizes NPAC to make such NPAC SMS, other system changes and/or changes in the Pac-West "tunables" so that Pac-West's concurrence windows are reduced, to the extent possible, to zero.
- Any otherwise validly submitted order to port a number from Pac-West in the Exited Markets should not be held up by Pac-West's inability to concur or approve the customer transfer.
- This "blanket" pre-approval applies only to the Exited Markets.

This "blanket" pre-approval does not relieve any entity (including but not limited to any carrier submitting a port request or any vendor that processes the request) of its responsibility to comply with applicable law and regulations, including those prohibiting "slamming". As NPAC is likely aware, any potential "slamming" liability rests with the submitting carrier not with either NPAC or Pac-West.

Copies of this letter are being provided to NeuStar, Inc., VeriSign, Inc., Synchronoss Technologies, Inc., Wisor and AT&T Connecticut SNET Service Bureau for Number Portability and may also be provided to other vendors of number portability order management services.

Questions on customer migration and number portability may be addressed to Kim Rego at (209) 926-4214 or kreg@pacwest.com or Joseph Perez at (209) 926-3101 or josperez@pacwest.com.

Sincerely yours,

PAC-WEST TELECOMM, INC.

Declaration of Shawn O'Donnell
WC Docket No. 07-156
August 13, 2007

EXHIBIT 7

August 8, 2007 Email from RNK

From: Bettie Kilcoyne [<mailto:bettiek@rnkcom.com>]
Sent: Wednesday, August 08, 2007 12:41 PM
To: Joseph Perez; Kim Rego; Wendi Simpson; Port Out; AM Support
Cc: 'Judy Spaulding'; 'Scott'; 'Jim Palmisano'
Subject: Port for DollarPhone in Florida dated for 8-9-07

Jose

We have been notified this afternoon that this port needs to be postponed until the customer is ready. Judy has been working with you on this request. T <<image001.jpg>> he PW order is 197042 and FOC is 8-9-07.

I know Judy has subscribed in NPAC for these numbers for tomorrow. We will not be able to complete the port. Please confirm we can stop this port.

Bettie Kilcoyne
Manager/Provisioning and Numbering

333 Elm St., Suite 310
Dedham, MA 02026
t: 781-613-9101
f: 781-326-0211

c:781-234-8617
bettiek@rnktel.com <<mailto:x@rnktel.com>> www.rnkcom.com
<<http://www.rnkcom.com/>>

Declaration of Shawn O'Donnell
WC Docket No. 07-156
August 13, 2007

EXHIBIT 8

Sample Dollar Phone Prepaid Calling Cards



Prepaid Phone Card

**Bean
TOWN**

\$ 2



Prepaid Phone Card

**Bean
TOWN**

\$ 2

No Connection Fee / Sin Cargos de Conexión

**ENGLISH**

1. From any touch tone phone dial access number.
2. Enter your PIN #.
3. For calls within the U.S., Canada or the Caribbean dial:
1 + area code + Telephone number.
For international calls dial: 011 + Country
code + City code + number + #.
4. Press # # for another call.

Surcharges and fees may affect actual number of minutes delivered. International calls made to cellular phones and calls via toll free numbers are billed at higher rates. Rates are subject to change without notice. Maintenance fee and/or network fee per call may apply. A payphone surcharge applies per call. Card has no cash value and is non-refundable. Card is valid for 3 Months from first use, or 12 months from activation. Services provided by DPE. Distributed by Voice Prepaid.

**\$2****ESPAÑOL**

1. Marque el número de acceso detrás de su tarjeta.
2. Cuando lo indiquen, marque el código de su tarjeta.
3. Para llamar dentro de los Estados Unidos, a Canadá o al Caribe marque: 1 + el código de área + el número de teléfono. Para llamar para cualquier otro país marque: 011 + el código del país + el código de la ciudad + el número de teléfono + #.
4. Presione el ## para otra llamada.

Para Español *1

| MASSACHUSETTS | |
|----------------------|--------------|
| QUINCY | 617-829-4594 |
| BOSTON | 617-861-4593 |
| BRIGHTON | 617-586-4074 |
| CAMBRIDGE | 617-453-4074 |
| BRAINTREE | 781-654-4074 |
| LYNN | 781-691-4074 |
| REVERE | 781-951-4592 |
| MALDEN | 781-954-4593 |
| WOBURN | 781-787-4074 |
| NANTUCKET | 774-333-2593 |
| BROCKTON | 774-776-4074 |
| PLYMOUTH | 774-773-4074 |

| NEW BEDFORD 508-817-4594 | |
|---------------------------------|--------------|
| FALL RIVER | 508-974-4592 |
| HYANNIS | 508-418-4594 |
| FALMOUTH | 508-388-4074 |
| FRAMINGHAM | 508-834-4593 |
| MARLBORO | 508-658-4074 |
| WORCESTER | 508-556-4593 |
| LAWRENCE | 978-237-4591 |
| LOWELL | 978-364-4074 |
| LEOMINISTER | 978-786-4592 |
| FITCHBURG | 978-400-4593 |
| HUDSON | 978-310-4383 |
| SPRINGFIELD | 413-351-2582 |

Para Português *2

| RHODE ISLAND | |
|---------------------------------|--------------|
| NEWPORT | 401-314-4594 |
| WOONSOCKET | 401-526-4591 |
| PAWTUCKET | 401-753-4592 |
| PROVIDENCE | 401-648-0044 |
| NEW HAMPSHIRE | |
| MANCHESTER | 603-413-4592 |
| CONCORD | 603-513-4592 |
| PORTSMOUTH | 603-812-4074 |
| NASHUA | 603-318-0034 |
| SALEM | 603-912-4592 |
| Toll Free 1-800-574-5590 | |

Customer Service: 1-888-545-4418

**PIN:**

416002-1046288

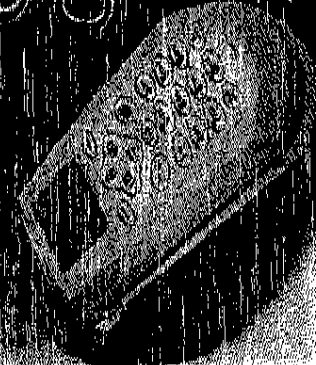


\$2

Coffee Time
Call Me Time



Coffee Time
Call Me Time



\$2

Premium Phone Card
No connection fee

**\$2 Coffee Time
Call Me TimeSM**



8 34176 12802 8



| MASSACHUSETTS | | MASSACHUSETTS | |
|---------------|--------------|---------------|--------------|
| SOMERVILLE | 857-897-4383 | HAVERHILL | 978-361-4592 |
| DEDHAM | 781-613-4592 | GLOUCESTER | 978-515-4592 |
| CANTON | 781-739-4592 | PEABODY | 978-395-4592 |
| STOUGHTON | 781-695-4593 | DENIS | 508-470-4594 |
| WEYMOUTH | 781-277-4592 | AMHERST | 413-461-4074 |
| ABINGTON | 781-384-4383 | HOLYOKE | 413-561-4074 |
| ACTON | 978-301-4592 | | |

Customer Service: 1-888-565-4418

Surcharges and fees may affect actual number of minutes delivered. International calls made to cellular phones and calls via toll free numbers are billed at higher rates. Rates are subject to change without notice. Maintenance fee and/or network fee per call may apply. A payphone surcharge applies per call. Card has no cash value and is non-refundable. Card is valid for 3 Months from first use, or 12 months from activation. Services provided by DPE. Distributed by Voice Prepaid.

Para Español * 1

| MASSACHUSETTS | |
|---------------|--------------|
| BRIGHTON | 617-586-4074 |
| CAMBRIDGE | 617-453-4074 |
| QUINCY | 617-829-4594 |
| BOSTON | 617-861-4593 |
| BRAINTREE | 781-854-4074 |
| LYNN | 781-691-4074 |
| REVERE | 781-951-4592 |
| MALDEN | 781-954-4593 |
| WOBURN | 781-787-4074 |
| NANTUCKET | 774-333-2593 |
| BROCKTON | 774-776-4074 |
| PLYMOUTH | 774-773-4074 |

| | |
|-------------|--------------|
| HYANNIS | 508-418-4594 |
| FALMOUTH | 508-388-4074 |
| NEW BEDFORD | 508-817-4594 |
| FALL RIVER | 508-974-4592 |
| FRAMINGHAM | 508-834-4593 |
| MARLBORO | 508-658-4074 |
| WORCESTER | 508-556-4593 |
| LAWRENCE | 978-237-4591 |
| LOWELL | 978-364-4074 |
| LEOMINISTER | 978-786-4592 |
| FITCHBURG | 978-400-4593 |
| HUDSON | 978-310-4383 |
| SPRINGFIELD | 413-351-2582 |

Para Portugues * 2

| RHODE ISLAND | |
|--------------------------|--------------|
| PAWTUCKET | 401-753-4592 |
| PROVIDENCE | 401-648-0044 |
| NEWPORT | 401-314-4594 |
| WOONSOCKET | 401-526-4591 |
| NEW HAMPSHIRE | |
| PORTSMOUTH | 603-812-4074 |
| NASHUA | 603-318-0034 |
| MANCHESTER | 603-413-4592 |
| CONCORD | 603-513-4592 |
| SALEM | 603-912-4592 |
| Toll Free 1-800-574-5590 | |

Customer Service:
1-888-565-4418

PIN#



Services provided by DPE.
Distributed by Voice Prepaid.

49902-848405





**\$2**

MARTINI

CALLING CARD



By using this card you agree to the following: Prompted minutes are before applicable charges and fees, application of surcharges and fees have an effect of reducing total minutes on cards. - One or all of the following may apply: 1) A weekly maintenance fee ranging between .49 and .79. 2) A hang-up fee ranging between .05 and \$1 depending upon length and destination of the call. 3) A destination surcharge of between 0% and 100%. - minutes and/or seconds are rounded to multiple minute increments. - International calls made to cellular phones are billed at higher rates. - Toll free access numbers are subject to an additional fee of up to 4 cents per minute. - A payphone surcharge of up to .99 applies. - Prices are subject to change without notice. - This card has no cash value. - Card expires 3 months after first use or 12 months after activation. - Services provided by DPE.

PIN:

For English Press *0

Para Portugues *7

| MASSACHUSETTS | | | |
|---------------|--------------|---------------------------------|--------------|
| Somerville | 857-997-4265 | Plymouth | 774-773-2122 |
| Brighton | 617-586-2206 | New Bedford | 508-817-3473 |
| Boston | 617-861-4276 | Fall River | 508-974-2036 |
| Braintree | 781-654-2026 | Hyannis | 508-418-0831 |
| Lynn | 781-691-2206 | Falmouth | 508-388-2206 |
| Revere | 781-951-2122 | Frammingham | 508-834-1384 |
| Malden | 781-667-2893 | Marlboro | 508-658-4920 |
| Woburn | 781-787-2206 | Worcester | 508-556-0996 |
| Weymouth | 781-277-9908 | Denise | 508-470-2225 |
| Stoughton | 781-695-2027 | Lawrence | 978-237-2036 |
| Canton | 781-739-0088 | Lowell | 978-364-2205 |
| Nantucket | 774-333-2205 | Leominster | 978-786-2136 |
| Brockton | 774-776-0119 | Fitchburg | 978-878-9443 |
| | | Hudson | 978-310-4026 |
| | | NEW HAMPSHIRE | |
| | | Peabody | 978-395-2206 |
| | | Concord | 603-513-0214 |
| | | Acton | 978-393-2205 |
| | | Manchester | 603-413-2122 |
| | | Gloucester | 978-515-2205 |
| | | Portsmouth | 603-812-2974 |
| | | Springfield | 413-351-2206 |
| | | Nashua | 603-318-0874 |
| | | Holyoke | 413-561-2027 |
| | | Salem | 603-912-2026 |
| | | Laconia | 603-273-4006 |
| | | Keene | 603-338-4135 |
| | | Toll Free 1-888-599-1715 | |

Customer Service: 1-800-297-8124 Network services provided by DPE.

555302-010548

\$5

Los
IMIGRANTES

TARJETA PREPAGADA

VALIDA PARA

Guatemala

El Salvador

Honduras

Nicaragua

Costa Rica

Panamá

Paraguay

Uruguay

Venezuela

Argentina

Brasil

Chile

Perú

Ecuador

Colombia

Venezuela

Argentina

Brasil

Chile

Perú

Ecuador

Colombia

Venezuela

Argentina

Brasil

Chile

Perú

Ecuador

Colombia

Venezuela

Argentina



NO CONNECTION FEE

SIN CARGOS DE CONEXION

\$5

Los
IMIGRANTES

TARJETA PREPAGADA

VALIDA PARA

Guatemala

El Salvador

Honduras

Nicaragua

Costa Rica

Panamá

Paraguay

Uruguay

Venezuela

Argentina

Brasil

Chile

Los INMIGRANTES

\$5

CAROLINA LOCAL ACCESS

| | | | |
|---------------|--------------|------------|--------------|
| Greenville | 252-558-1586 | Greenville | 864-351-0252 |
| Kinston | 252-525-4200 | Spartanbg | 864-541-0462 |
| Hendersnvt | 828-393-0649 | Clemson | 864-623-0221 |
| Asheville | 828-398-4312 | Gastonia | 704-215-4268 |
| Hickory | 828-449-8839 | Charlotte | 704-790-3918 |
| Lenoir | 828-394-4450 | Monroe | 704-288-1242 |
| Morganton | 828-475-4414 | Lincolnton | 704-479-6503 |
| Marion | 828-527-0256 | Cary | 919-439-7254 |
| Charleston | 843-302-0089 | Apex | 919-249-4463 |
| Myrtle Bch | 843-788-0042 | Raleigh | 919-827-1749 |
| Greensboro | 336-346-0112 | Chapelhill | 919-883-3051 |
| Asheboro | 336-308-4077 | Clayton | 919-585-4827 |
| Burlington | 336-506-7187 | Durham | 919-794-4099 |
| Winston Salem | 336-793-5806 | Lumberton | 910-816-4982 |
| Columbia | 803-217-3713 | Wilmington | 910-795-4699 |

1. Dial the access number.
2. Enter the PIN number.
3. Enter the destination number.
4. To make another call, DO NOT hang up, press ## then dial new number.
5. To Redial, DO NOT hang up, Press ## then OK.
1. Marque el numero de acceso.
2. Marque su numero de codigo.
3. Marque el numero destinado.
4. Para hacer otra llamada, NO cuelgue el telefono, presione ## y marque el nuevo numero.
5. Para marcar de nuevo, NO cuelgue el telefono, presione ## despues de.

Press *1 for Spanish. Presione estrella uno (*1) para Espanol.

For Distribution call: 704-866-2423 Para Distribucion: 704-866-2423

International calls made to cellular phones and call via toll free numbers are billed at higher rates. Maintenance/service fees and other charges may apply. Calls made from US payphones will have a per call fee applied. Application of surcharges and fees may have an effect of reducing total minutes on cards. Prices are subject to change without notice. This card has no cash value. Card expires 3 Months after first use. Services provided by DPE.

Las llamadas internacionales echas a celulares y a llamada via numeros gratis seran cobradas a precios mas altos. Cargos e impuestos para mantenimiento y o servicio pueden ser aplicados. Las llamadas echas por un telefono publico localizado en los E.E. U.U. tendran un cargo por cada llamada. El uso de sobrecargas e impuestos pueda tener un efecto de reducir el total de minutos que trae las tarjetas. Los precios pueden ser cambiados sin aviso. Esta tarjeta no tiene ningun valor monetario. La tarjeta se vence en tres (3) meses despues de su primer uso. Estos servicios son traídos por DPE.

CAROLINA LOCAL ACCESS

| | | | | | |
|------------|--------------|---------------|--------------|------------|--------------|
| Greenville | 252-558-1586 | Greenville | 864-351-0252 | Asheboro | 336-308-4077 |
| Kinston | 252-525-4200 | Spartanbg | 864-541-0462 | Burlington | 336-506-7187 |
| Hendersnvt | 828-393-0649 | Clemson | 864-623-0221 | Lumberton | 910-816-4982 |
| Asheville | 828-398-4312 | Columbia | 803-217-3713 | Wilmington | 910-795-4699 |
| Hickory | 828-449-8839 | Gastonia | 704-215-4268 | Cary | 919-439-7254 |
| Lenoir | 828-394-4450 | Charlotte | 704-790-3918 | Apex | 919-249-4463 |
| Morganton | 828-475-4414 | Monroe | 704-288-1242 | Raleigh | 919-827-1749 |
| Marion | 828-527-0256 | Lincolnton | 704-479-6503 | Chapelhill | 919-883-3051 |
| Charleston | 843-302-0089 | Greensboro | 336-346-0112 | Clayton | 919-585-4827 |
| Myrtle Bch | 843-788-0042 | Winston Salem | 336-793-5806 | Durham | 919-794-4099 |

PIN#

Toll Free Access Number: 1-800-979-3101

Customer Service: 800-413-0351

Para Mas Minutos Use El Acceso Local

For More Minutes Use Local Access

45305 169190



\$5

Tarjeta Telefonica Prepagada

LOS TIGRES DEL NORTE

SIN CARGOS DE CONEXION



LOS
TIGRES
DEL NORTE

\$5

LOS TIGRES DEL NORTE

Press *0 for English

| ILLINOIS | | | |
|-----------------|--------------|-----------------|----------------|
| Aurora | 630-401-8000 | Chi-Austin | 773-966-0803 |
| Bartlett | 224-208-0900 | Chi-Jefferson | 773-966-0804 |
| Blue Island | 708-377-9400 | Chi-O'hare | 773-966-0805 |
| Brookfield | 708-680-3706 | Elgin | 224-535-0900 |
| Chicago Zone 1 | 312-929-1100 | Elk Grove | 224-222-0700 |
| Chi-Irving Park | 773-410-5400 | Geneva | 630-397-0600 |
| Chi-Rogers Park | 773-410-5401 | Hinsdale | 630-468-0100 |
| Chi-Kildare | 773-410-5402 | Itasca | 847-250-6700 |
| Chi-Merrimac | 773-410-5403 | Round Lake | 847-886-0600 |
| Chi-Kendzie | 773-410-5404 | Skokie | 847-423-0900 |
| Chi-Southside | 773-966-0800 | Western Springs | 708-292-6600 |
| Chi-Lakeview | 773-966-0801 | Woodstock | 815-308-0700 |
| Chi-New Castle | 773-966-0802 | Toll Free | 1-888-333-1555 |

By using this card you agree to the following: Prompted minutes are before applicable charges and fees, application surcharges and fees have an effect of reducing total minutes on cards. - One or all of the following may apply: 1) A web maintenance fee ranging between .49 and .79. 2) A hang-up fee ranging between .05 and \$1 depending upon length of destination of the call. 3) A destination surcharge of between 0% and 100%. - minutes and/or seconds are rounded multiple minute increments. - International calls made to cellular phones are billed at higher rates. - Toll free numbers are subject to an additional fee of up to 4 cents per minute. - Prices are subject to change without notice. - Card has no cash value. - Card expires 3 Months after first use or 12 months after activation. - Services provided by U

Press *0 for English

| ILLINOIS | | Chicago | | Itasca | |
|-------------|--------------|-----------|--------------|---------------|----------------|
| Aurora | 630-401-8000 | Chicago | 773-410-5400 | Itasca | 847-250-6700 |
| Bartlett | 224-208-0900 | Chicago | 773-966-0800 | Round Lake | 847-886-0600 |
| Blue Island | 708-377-9400 | Elgin | 224-535-0900 | Skokie | 847-423-0900 |
| Brookfield | 708-680-3706 | Elk Grove | 224-222-0700 | Western Sprgs | 708-292-6600 |
| Chicago | 312-929-1100 | Geneva | 630-397-0600 | Woodstock | 815-308-0700 |
| | | Hinsdale | 630-468-0100 | Toll Free | 1-888-333-1555 |

1. From any touch tone phone, dial the number that represents your calling location.
2. Enter your personal card number.
3. Enter your destination number; 1+ area code + tel. number.
4. For international calls dial: 011 + country code + city code + telephone number.
5. To make another call, press # #.

1. Marque el número gratis detrás de su tarjeta.
2. Marque su código privado.
3. Marque el número que desea: 1+ código de área + número de teléfono.
4. Para llamadas internacionales marque: 011 + código de país + código de la ciudad + número de teléfono.
5. Para hacer otra llamada marque # #.

PIN

5253 8033 8747

Customer Service 1-800-287-8124 • Distributed by RAZA.



DollarPhone
Service provided by!

501005-049278

\$5

el **GIGANTE** TARJETA PREPAGADA

SIN CARGOS DE CONEXION

el **GIGANTE**

TARJETA PREPAGADA
SIN CARGOS DE CONEXION

\$5

EL GIGANTE**\$5****ILLINOIS**

| | |
|-----------------------------|---------------------|
| AURORA | 630-723-0616 |
| BARTLETT | 630-823-2366 |
| BLUEISLAND | 708-653-4472 |
| BROOKFIELD | 708-290-4241 |
| CHICAGOHTS | 708-983-0432 |
| CHICGOZNO1 | 312-604-0846 |
| CHI-IRVING PARK | 773-751-1223 |
| CHI-ROGERS PARK | 773-751-1223 |
| CHI-KILDARE | 773-751-1223 |
| CHI-MERRIMAC | 773-751-1223 |
| CHI-KEDZIE | 773-751-1223 |
| CHI-NEW CASTLE | 773-435-1701 |
| CHI-LAKEVIEW | 773-435-1701 |
| CHI-AUSTIN/JEFFERSON | 773-435-1701 |
| CHI-LAFAYETTE | 773-435-1701 |
| CHI-O'HARE | 773-435-1701 |
| CHI-SOUTHSIDE | 773-573-1506 |
| ELGIN | 847-760-0174 |
| ELK GROVE | 847-709-5245 |
| GENEVA | 630-463-5068 |
| HINSDALE | 630-286-8224 |
| ITASCA | 630-735-0496 |
| MINOOKA | 815-642-8021 |
| NORTHBROOK | 847-656-0785 |
| ROUND LAKE | 847-201-5279 |
| SKOKIE | 847-324-1085 |
| WESTERNSPG | 708-292-1221 |
| WOODSTOCK | 815-880-0505 |

| | | | | | |
|-------------------|---------------------|-------------------|---------------------|-------------------|---------------------|
| AURORA | 630-723-0616 | CHICGOZNO4 | 773-435-1701 | ITASCA | 630-735-0496 |
| BARTLETT | 630-823-2366 | CHICGOZNO7 | 773-573-1506 | NORTHBROOK | 847-656-0785 |
| BLUEISLAND | 708-653-4472 | ELGIN | 847-760-0174 | ROUND LAKE | 847-201-5279 |
| BROOKFIELD | 708-290-4241 | ELK GROVE | 847-709-5245 | SKOKIE | 847-324-1085 |
| CHICAGOHTS | 708-983-0432 | GENEVA | 630-463-5068 | WESTERNSPG | 708-292-1221 |
| CHICGOZNO1 | 312-604-0846 | HINSDALE | 630-286-8224 | WOODSTOCK | 815-880-0505 |
| CHICGOZNO2 | 773-751-1223 | MINOOKA | 815-642-8021 | | |

ACCESO GRATIS : 1-800-820-4951Ingrese su
Número de PIN:**3498-5666-1044**

2) Después del tono, ingrese su número de PIN

3) Siga las instrucciones de voz.

Para llamadas domésticas marque: 1 + Código de Área + Número de Teléfono.

Para llamadas internacionales marque: 011 + Código del País + Código de la Ciudad + Número de Teléfono.

Para rellamadas marque ##

SERVICIO AL CLIENTE : 1-888-775-7378

Las llamadas internacionales están a celulares y a llamadas vía números gratis serán cobradas a precios más altos. Cargos e impuestos para mantenimiento y/o servicio pueden ser aplicados. Las llamadas están por un tiempo público limitado en los E.E.U.U. tendrán un cargo por cada llamada. El uso de sobrecargos e impuestos puede tener un efecto de reducir el total de minutos que trae las tarjetas. Los precios pueden ser cambiados sin aviso. Esta tarjeta no tiene ningún valor monetario. La tarjeta se vence en tres (3) meses después de su primer uso. (Por 12 meses after activation) Estos servicios son gratis por GPS.

377105-47545

**MINOOKA
NORTHBROOK
ROUND LAKE
SKOKIE
WESTERNSPG
WOODSTOCK**

**815-642-8021
847-656-0785
847-201-5279
847-324-1085
708-292-1221
815-880-0505**

| | | | | | |
|------------|--------------|------------|--------------|------------|--------------|
| AURORA | 630-723-0616 | CHICGOZNO4 | 773-435-1701 | ITASCA | 630-735-0496 |
| BARTLETT | 630-823-2366 | CHICGOZNO7 | 773-573-1506 | NORTHBROOK | 847-656-0785 |
| BLUEISLAND | 708-653-4472 | ELGIN | 847-760-0174 | ROUND LAKE | 847-201-5279 |
| BROOKFIELD | 708-290-4241 | ELK GROVE | 847-709-5245 | SKOKIE | 847-324-1085 |
| CHICAGOHTS | 708-983-0432 | GENEVA | 630-463-5068 | WESTERNSPG | 708-292-1221 |
| CHICGOZNO1 | 312-604-0846 | HINSDALE | 630-286-8224 | WOODSTOCK | 815-880-0505 |
| CHICGOZNO2 | 773-751-1223 | MINOOKA | 815-642-8021 | | |

ACCESO GRATIS : 1-800-820-4951

Ingrese su
Número de PIN:

3498-5666-1044

2) Después del tono, ingrese su número de PIN

3) Siga las instrucciones de voz.

Para llamadas domésticas marque: 1 + Código de Área + Número de Teléfono.

Para llamadas internacionales marque: 011 + Código del País + Código de la Ciudad + Número de Teléfono.

Para rellamadas marque ##

SERVICIO AL CLIENTE : 1-888-775-7378

Las llamadas internacionales echas a celulares y a llamada via numeros gratis seran cobradas a precios mas altos. Gargos e impuestos para mantenimiento y o servicio pueden ser aplicados. Las llamadas echas por un telefono publico localizado en los E.E. U.U. tendran un cargo por cada llamada. El uso de sobrecargos e impuestos puede tener un efecto de reducir el total de minutos que trae las tarjetas. Los precios pueden ser cambiados sin aviso. Esta tarjeta no tiene ningun valor monetario. La tarjeta se vence en tres (3) meses despues de su primer uso. (or 12 months after activation) Estos servicios son traídos por DPE

DPE

377105-47545

Declaration of Shawn O'Donnell
WC Docket No. 07-156
August 13, 2007

EXHIBIT 9

July 19, 2007 Email to Dollar Phone

-----Original Message-----

From: Melissa Podesto
Sent: Thursday, July 19, 2007 1:37 PM
To: 'Peter Austin'
Subject: RE: ?

It could.. (IT REALLY COULD! SOON)

-----Original Message-----

From: Peter Austin [mailto:Peter@dollarphone.com]
Sent: Thursday, July 19, 2007 1:04 PM
To: Melissa Podesto
Subject: RE: ?

What are U expecting to hear? I hope it's not shut down...

Peter Austin.

Sr. V.P. Business Development

O. 718-889-1131

C. 718-551-1168

F. 718-889-1229

From: Melissa Podesto [mailto:mpodesto@pacwest.com]
Sent: Thursday, July 19, 2007 3:51 PM
To: Peter Austin
Subject: RE: ?

East is ugly right now. We are suppose to here a final decision tomorrow. We are burning way too much cash on the network.
I am EXTREMELY frustrated.. The West is still VERY solid it is not going anywhere..

-----Original Message-----

From: Peter Austin [mailto:Peter@dollarphone.com]
Sent: Thursday, July 19, 2007 12:49 PM
To: Melissa Podesto
Subject: ?

Ms. M
What's up?

Peter Austin.

Sr. V.P. Business Development

O. 718-889-1131

C. 718-551-1168

F. 718-889-1229